

EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

**Nondiscrimination —  
in General**

A district shall not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of any of the following protected characteristics:

1. Race, color, or national origin;
2. Sex;
3. Religion;
4. Age (applies to individuals who are 40 years of age or older);
5. Disability; or
6. Genetic information [see DAB].

*42 U.S.C. 1981; 42 U.S.C. 2000e et seq. (Title VII); 20 U.S.C. 1681 et seq. (Title IX); 42 U.S.C. 12111 et seq. (Americans with Disabilities Act); 29 U.S.C. 621 et seq. (Age Discrimination in Employment Act); 29 U.S.C. 793, 794 (Rehabilitation Act); 42 U.S.C. 2000ff et seq. (Genetic Information Nondiscrimination Act); U.S. Const. Amend. I; Human Resources Code 121.003(f); Labor Code Ch. 21 (Texas Commission on Human Rights Act); Labor Code Ch. 21, Subch. H (genetic information)*

Title VII proscribes employment practices that are overtly discriminatory (disparate treatment), as well as those that are fair in form but discriminatory in practice (disparate impact). Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)

Disparate  
Treatment

Disparate treatment (intentional discrimination) occurs when members of a protected group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. 29 C.F.R. 1607.11

Disparate Impact

Disparate impact occurs when an employer uses a particular employment practice that causes a disparate (disproportionate) impact on a protected group and the employer fails to demonstrate that the challenged practice is job-related and consistent with business necessity. 42 U.S.C. 2000e-2(k)(1)(A); Labor Code 21.115, .122

Bankruptcy  
Discrimination

A district may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under federal bankruptcy laws. A district may not discriminate against a person with whom a bankrupt or debtor has been associated, solely because the bankrupt or debtor is or has been a debtor under federal bankruptcy laws; was insolvent before the commencement of a bankruptcy case or dur-

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ing the case but before the debtor was granted or denied a discharge; or has not paid a debt that is dischargeable in the bankruptcy case or that was discharged under the bankruptcy laws. *11 U.S.C. 525(a)*

**Job Qualification**

A district may take employment actions based on religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. *42 U.S.C. 2000e-2(e); 29 U.S.C. 623(f); Labor Code 21.119*

**Employment Postings**

A district shall not print or publish any notice or advertisement relating to district employment that indicates any preference, limitation, specification, or discrimination based on race, color, religion, sex, disability, or national origin, unless the characteristic is a bona fide occupational qualification. *42 U.S.C. 2000e-3(b); Labor Code 21.059*

**Harassment of Employees**

A district has an affirmative duty to maintain a working environment free of harassment on the basis of a protected characteristic. *42 U.S.C. 2000e et seq.; 29 C.F.R. 1606.8(a), 1604.11* [See DIA]

**Retaliation**

A district may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. *29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 34 C.F.R. 100.7(e) (Title VI); 34 C.F.R. 110.34 (Age Act); 42 U.S.C. 12203 (ADA); Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005) (Title IX); Labor Code 21.055* [See DIA]

**Notices**

A district shall post in conspicuous places upon its premises a notice setting forth the information the Equal Employment Opportunity Commission deems appropriate to effectuate the purposes of the anti-discrimination laws. *29 U.S.C. 627; 42 U.S.C. 2000e-10*

**Section 504 Notice**

A district that employs 15 or more persons shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability.

The notice shall state:

1. That the district does not discriminate in employment in its programs and activities; and
2. The identity of the district's 504 coordinator.

Methods of notification may include:

1. Posting of notices;

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2. Publication in newspapers and magazines;
3. Placing notices in district publications; and
4. Distributing memoranda or other written communications.

If a district publishes or uses recruitment materials containing general information that it makes available to applicants or employees, it shall include in those materials a statement of its nondiscrimination policy.

*34 C.F.R. 104.8*

**Age Discrimination**

A district may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee benefit plan. However, a bona fide employee benefit plan shall not excuse the failure to hire any individual and no such benefit plan shall require or permit the involuntary retirement of any individual because of age. *29 U.S.C. 623(f); Labor Code 21.102*

**Sex Discrimination**

Gender Stereotypes

A district may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)

Pregnancy

The prohibition against discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. A district shall treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees for all employment-related purposes, including receipt of benefits under fringe benefit programs. *42 U.S.C. 2000e(k); 29 C.F.R. 1604.10; Labor Code 21.106*

Equal Pay

A district may not pay an employee at a rate less than the rate the district pays employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort, or responsibility and which are performed under similar working conditions. This rule does not apply if the payment is pursuant to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. *29 U.S.C. 206(d) (Equal Pay Act); 34 C.F.R. 106.54 (Title IX)*

**Religious  
Discrimination**

The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless a district demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to the district's business. "Undue hardship" means more than a *de minimus* (minimal) cost. *42 U.S.C. 2000e(j); 29 C.F.R. 1605.2; Labor Code 21.108*

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A district may not substantially burden an employee's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003*

A person employed or maintained to obtain or aid in obtaining positions for public school employees may not directly or indirectly ask about, orally or in writing, the religion or religious affiliation of anyone applying for employment in a public school of this state. A violation of this provision is a Class B misdemeanor. A person who violates this provision is subject to civil penalties. *Education Code 22.901*

**Disability  
Discrimination**

A district may not discriminate against a qualified individual on the basis of disability in job application procedures, hiring, advancement, or discharge of employees, compensation, job training, and other terms, conditions, and privileges of employment. *42 U.S.C. 12112(a); 29 C.F.R. 1630.4(b); Labor Code 21.051*

In addition, each district that receives assistance under the Individuals with Disabilities Education Act (IDEA) must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted by the IDEA. *34 C.F.R. 300.177(b)*

Discrimination  
Based on Lack of  
Disability

The Americans with Disabilities Act (ADA) and the Texas Commission on Human Rights Act do not provide a basis for a claim that an individual was subject to discrimination because of the individual's lack of disability. *42 U.S.C. 12201(g); 29 C.F.R. 1630.4(b); Labor Code 21.005(c)*

Definition of  
Disability

"Disability" means:

1. An actual disability: a physical or mental impairment [see definition, below] that substantially limits one or more of an individual's major life activities;
2. A record of having such an impairment; or
3. Being regarded as having such an impairment.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

*"Regarded as"  
Having an  
Impairment*

An individual meets the requirement of being "regarded as" having an impairment if the individual establishes that he or she has been subjected to an action prohibited by the ADA because of an actual

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or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

Transitory and  
Minor

The “regarded as” prong of the definition does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less. The “transitory” exception does not apply to the “actual disability” or “record of disability” prongs of the definition.

*Mitigating  
Measures*

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices, prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

The ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses and contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

*42 U.S.C. 12102(1), (3), (4); 29 C.F.R. 1630.2(g), (j)(1); Labor Code 21.002, .0021*

Other Definitions

*“Physical or  
Mental  
Impairment”*

“Physical or mental impairment” means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
2. Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

*29 C.F.R. 1630.2(h)*

*“Major Life  
Activities”*

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

“Major life activities” also include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary,

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bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within the body system.

*42 U.S.C. 12102(2); 29 C.F.R. 1630.2(i); Labor Code 21.002*

*“Qualified Individual”*

“Qualified individual” means an individual who:

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires; and
2. With or without reasonable accommodation, can perform the essential functions of such position. Consideration shall be given to a district’s judgment as to what functions of a job are essential. A written job description prepared before advertising or interviewing applicants for the job is evidence of the job’s essential functions.

*42 U.S.C. 12111(8); 29 C.F.R. 1630.2(m)*

Reasonable  
Accommodations

A district is required, absent undue hardship, to make a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” or “record of disability” prongs. A district is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong. *42 U.S.C. 12112(b)(5); 29 C.F.R. 1630.2(o)(4), .9; 29 U.S.C. 794; 34 C.F.R. 104.11; Labor Code 21.128* [See DBB regarding medical examinations and inquiries under the Americans with Disabilities Act]

“Reasonable accommodation” includes:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

*42 U.S.C. 12111(9); 29 C.F.R. 1630.2(o); 34 C.F.R. 104.12(b)*

“Undue hardship” means an action requiring significant difficulty or expense when considered in light of the nature and cost of the accommodation needed, overall financial resources of the affected facility and the district, and other factors set out in law. *42 U.S.C. 12111(10); 29 C.F.R. 1630.2(p); 34 C.F.R. 104.12(c)*

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Discrimination  
Based on  
Relationship

A district shall not exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. *42 U.S.C. 12112(b)(4); 29 C.F.R. 1630.8; 34 C.F.R. 104.11*

**Illegal Drugs and  
Alcohol**

The term “qualified individual with a disability” does not include any employee or applicant who is currently engaging in the illegal use of drugs, when a district acts on the basis of such use.

Drug Testing

A district is not prohibited from conducting drug testing of employees and applicants for the illegal use of drugs or making employment decisions based on the results of such tests.

*42 U.S.C. 12114(c), (d); Labor Code 21.002(6)(A) [See DHE]*

Alcohol Use

The term “qualified individual with a disability” does not include an individual who is an alcoholic and whose current use of alcohol prevents the employee from performing the duties of his or her job or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others. *42 U.S.C. 12114(a); 29 U.S.C. 705(20)(C); 29 C.F.R. 1630.3(a); 28 C.F.R. 35.104; Labor Code 21.002(6)(A)*

Qualification  
Standards

It is unlawful for a district to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the district, is shown to be job related for the position in question and is consistent with business necessity. *29 C.F.R. 1630.10(a)*

*Direct Threat to  
Health or Safety*

As a qualification standard, a district may require that an individual not pose a direct threat to the health or safety of other individuals in the workplace. “Direct threat” means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. *42 U.S.C. 12111(3); 29 C.F.R. 1630.2(r); Labor Code 21.002(6)(B)*

*Vision Standards  
and Tests*

A district shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the district, is shown to be job-related for the position in question and consistent with business necessity. *42 U.S.C. 12113(c); 29 C.F.R. 1630.10(b); Labor Code 21.115(b)*

*Communicable  
Diseases*

A district may refuse to assign or continue to assign an individual to a job involving food handling if the individual has an infectious or communicable disease that is transmitted to others through han-

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dling of food. *42 U.S.C. 12113(e); 29 U.S.C. 705(20)(D); 29 C.F.R. 1630.16(e); Labor Code 21.002(6)(B)*

**Service Animals**

A district that is subject to the jurisdiction of Title I of the ADA (employment discrimination) or to section 504 of the Rehabilitation Act (employment discrimination) shall comply with the reasonable accommodation requirements of those laws with respect to service animals. [See Reasonable Accommodations, above]

A district that is not subject to either Title I or section 504 shall comply with Title II of the ADA (discrimination by public entity). An employer that is subject to Title II shall comply with 28 C.F.R. part 35, including the requirements relating to service animals at 28 C.F.R. 35.136 [see FBA].

*28 C.F.R. 35.140*

**Military Service**

A district shall not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service. A district shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Re-employment Rights Act (USERRA). *38 U.S.C. 4311* [See also DECB]

**Grievance Policies**

Section 504

A district that receives federal financial assistance and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act. *34 C.F.R. 104.7(b), .11*

Americans with  
Disabilities Act

A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the ADA. *28 C.F.R. 35.107, .140*

Title IX

A district that receives federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. *34 C.F.R. 106.8(b); North Haven Board of Education v. Bell, 456 U.S. 512 (1982)*

**Compliance  
Coordinator**

A district shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, the Age Act, and the ADA. The district shall notify all employees of the name, office address, and telephone number of the employee(s) so designated. *34 C.F.R. 104.7(b), .11; 28 C.F.R. 35.107, .140; 34 C.F.R. 106.8(b)*

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**Note:** The provisions below apply to a district that has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. *42 U.S.C. 2000e(b), 2000ff(2)(B)*

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**Definitions**

For the purpose of the Genetic Information Nondiscrimination Act (GINA), “genetic information” means information about:

1. An individual’s genetic tests;
2. The genetic tests of that individual’s family members;
3. The manifestation of disease or disorder in family members of the individual (family medical history);
4. An individual’s request for or receipt of genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or
5. The genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

“Genetic information” does not include information about the sex or age of the individual, the sex or age of family members, or information about the race or ethnicity of the individual or family members that is not derived from a genetic test.

*29 CFR 1635.3(c)*

“Genetic test” means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. Genetic tests include, for example:

1. A test to determine whether someone has the BRCA1 or BRCA2 variant evidencing a predisposition to breast cancer, a test to determine whether someone has a genetic variant associated with hereditary nonpolyposis colon cancer, and a test for a genetic variant for Huntington’s Disease;
2. Carrier screening for adults using genetic analysis to determine the risk of conditions such as cystic fibrosis, sickle cell anemia, spinal muscular atrophy, or fragile X syndrome in future offspring;
3. Amniocentesis and other evaluations used to determine the presence of genetic abnormalities in a fetus during pregnancy;

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4. Newborn screening analysis that uses DNA, RNA, protein, or metabolite analysis to detect or indicate genotypes, mutations, or chromosomal changes, such as a test for PKU performed so that treatment can begin before a disease manifests;
5. Pre-implantation genetic diagnosis performed on embryos created using in vitro fertilization;
6. Pharmacogenetic tests that detect genotypes, mutations, or chromosomal changes that indicate how an individual will react to a drug or a particular dosage of a drug;
7. DNA testing to detect genetic markers that are associated with information about ancestry; and
8. DNA testing that reveals family relationships, such as paternity.

Examples of tests or procedures that are not genetic tests are:

1. An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes;
2. A medical examination that tests for the presence of a virus that is not composed of human DNA, RNA, chromosomes, proteins, or metabolites;
3. A test for infectious and communicable diseases that may be transmitted through food handling;
4. Complete blood counts, cholesterol tests, and liver-function tests.

A test for the presence of alcohol or illegal drugs is not a genetic test. However, a test to determine whether an individual has a genetic predisposition for alcoholism or drug use is a genetic test.

*29 CFR 1635.3(f)*

**Notices**

The District shall post in conspicuous places on its premises, where notices to employees and applicants for employment are customarily posted, a notice setting forth excerpts from or summaries of the pertinent provisions of the GINA regulation and information pertinent to the filing of a complaint. *29 CFR 1635.10(c)*

**Prohibited Practices**

Discrimination

The District shall not discriminate against an individual on the basis of genetic information in regard to hiring, discharge, compensation, or terms, conditions, or privileges of employment. Notwithstanding the foregoing, a cause of action for disparate impact is not available under GINA. *42 U.S.C. 2000ff-1(a); 29 CFR 1635.4*

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Retaliation	<p>The District shall not discriminate against an individual because the individual has opposed any act or practice made unlawful by GINA or because the individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under GINA. <i>42 U.S.C. 2000ff-6(f); 29 CFR 1635.7</i></p>
Acquisition	<p>Except as set forth below or otherwise provided in the GINA regulations, the District shall not request, require, or purchase genetic information of an individual or family member of the individual. <i>42 U.S.C. 2000ff-1(b); 29 CFR 1635.8(a)</i></p> <p>“Request” includes:</p> <ol style="list-style-type: none"><li>1. Conducting an Internet search on an individual in a way that is likely to result in the District’s obtaining genetic information;</li><li>2. Actively listening to third-party conversations or searching an individual’s personal effects for the purpose of obtaining genetic information; and</li><li>3. Making requests for information about an individual’s current health status in a way that is likely to result in the District’s obtaining genetic information.</li></ol> <p><i>29 CFR 1635.8(a)</i></p>
Disclosure	<p>A district that possesses genetic information, regardless of how the District obtained the information, shall not disclose the information except as set forth in the GINA regulations. <i>29 CFR 1635.9(b)</i> [See CONFIDENTIALITY, below]</p>
<b>Manifested Condition</b>	<p>The District shall not be considered to be in violation of the GINA regulations based on the use, acquisition, or disclosure of medical information about a manifested disease, disorder, or pathological condition of an employee or member, even if the disease, disorder, or pathological condition has or may have a genetic basis or component. However, genetic information about a manifested disease, disorder, or pathological condition is subject to the requirements and prohibitions of GINA. <i>29 CFR 1635.12</i></p> <p>“Manifestation” or “manifested” means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health-care professional with appropriate training and expertise in the field of medicine involved. A disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information. <i>29 CFR 1635.3(g)</i></p>

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**Inadvertent  
Acquisition**

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the District inadvertently requests or requires genetic information of the individual or family member of the individual. This exception applies in situations where a manager or supervisor learns genetic information about an individual by:

1. Overhearing a conversation between the individual and others;
2. Receiving the information during a casual conversation, including in response to an ordinary expression of concern that is the subject of the conversation. This exception does not apply where a manager or supervisor follows up with questions that are probing in nature, such as whether other family members have the condition or whether the individual has been tested for the condition, because the supervisor or official should know that these questions are likely to result in the acquisition of genetic information;
3. Receiving unsolicited information (e.g., where a manager or supervisor receives an unsolicited e-mail about the health of an employee's family member from a co-worker); or
4. Accessing a social media platform that the manager or supervisor was given permission to access by the creator of the profile at issue (e.g., a supervisor and employee are connected on a social networking site and the employee provides family medical history on his page).

*29 CFR 1635.8(b)(1)(ii)*

**Requests for Medical  
Information**

If the District acquires genetic information in response to a lawful request for medical information, the acquisition of genetic information will not generally be considered inadvertent unless the District directs the individual and/or health-care provider from whom it requested medical information not to provide genetic information [see SAFE HARBOR, below]. *29 CFR 1635.8(b)(1)(i)(A)*

Situations involving lawful requests for medical information include, for example:

1. Requests for documentation to support a request for reasonable accommodation under federal, state, or local law;
2. Requests for medical information as required, authorized, or permitted by federal, state, or local law, such as where an employee requests leave under the Family and Medical Leave Act (FMLA) to attend to the employee's own serious health

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condition or where an employee complies with the FMLA's employee return to work certification requirements; or

3. Requests for documentation to support leave that is not governed by federal, state, or local laws requiring leave, as long as the documentation required to support the request otherwise complies with the requirements of the Americans with Disabilities Act (ADA) and other laws limiting the District's access to medical information.

*29 CFR 1635.8(b)(1)(i)(D)*

Safe Harbor

Any receipt of genetic information in response to a request for medical information shall be deemed inadvertent if the District uses language such as the following:

"The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

The District's failure to give such a notice or to use this or similar language will not prevent the District from establishing that a particular receipt of genetic information was inadvertent if the request for medical information was not likely to result in the District's obtaining genetic information (for example, where an overly broad response is received in response to a tailored request for medical information).

*29 CFR 1635.8(b)(1)(i)(B), (C)*

Employment  
Examinations

The prohibition on acquisition of genetic information applies to medical examinations related to employment. The District shall tell health-care providers not to collect genetic information, including family medical history, as part of a medical examination intended to determine the ability to perform a job. *29 CFR 1635.8(d)*

*Remedial  
Measures*

The District shall take additional reasonable measures within its control if it learns that genetic information is being requested or required in medical examinations related to employment. Such rea-

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sonable measures may depend on the facts and circumstances under which a request for genetic information was made, and may include no longer using the services of a health-care professional who continues to request or require genetic information during medical examinations after being informed not to do so. *29 CFR 1635.8(d)*

**Health or Genetic Services**

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the District offers health or genetic services, including services offered as part of a voluntary wellness program, if the conditions at 29 CFR 1635.8(b)(2) are met.

The District may not offer a financial inducement for individuals to provide genetic information but may offer financial inducements for completion of health risk assessments that include questions about family medical history or other genetic information. The District shall make clear, in language reasonably likely to be understood by those completing the health risk assessment, that the inducement will be made available whether or not the participant answers questions regarding genetic information.

The District may offer financial inducements to encourage individuals who have voluntarily provided genetic information (e.g., family medical history) that indicates that they are at increased risk of acquiring a health condition in the future to participate in disease management programs or other programs that promote healthy lifestyles, and/or to meet particular health goals as part of a health or genetic service. However, the District must also offer these programs to individuals with current health conditions and/or to individuals whose lifestyle choices put them at increased risk of developing a condition.

*29 CFR 1635.8(b)(2)*

**Leave Requests**

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the District requests family medical history to comply with the certification provisions of the FMLA or state or local family and medical leave laws, or pursuant to a policy (even in the absence of requirements of federal, state, or local leave laws) that permits the use of leave to care for a sick family member and that requires all employees to provide information about the health condition of the family member to substantiate the need for leave. *29 CFR 1635.8(b)(3)*

**Publicly Available Information**

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the District acquires genetic information from documents that are commercially and pub-

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licly available for review or purchase, including newspapers, magazines, periodicals, or books, or through electronic media, such as information communicated through television, movies, or the Internet, except that this exception does not apply to:

1. Medical databases, court records, or research databases available to scientists on a restricted basis;
2. Genetic information acquired through sources with limited access, such as social networking sites and other media sources which require access permission from a specific individual or where access is conditioned on membership in a particular group, unless the District can show that access is routinely granted to all who request it;
3. Genetic information obtained through commercially and publicly available sources if the District sought access to those sources with the intent of obtaining genetic information; or
4. Genetic information obtained through media sources, whether or not commercially and publicly available, if the District is likely to acquire genetic information by accessing those sources, such as Web sites and online discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination.

*29 CFR 1635.8(b)(4)*

**Workplace  
Monitoring**

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the District acquires genetic information for use in the genetic monitoring of the biological effects of toxic substances in the workplace. Such monitoring must meet the criteria at 29 CFR 1635.8(b)(5). *29 CFR 1635.8(b)(5)*

**Inquiries Made of  
Family Members**

The District does not violate the GINA regulations when it requests, requires, or purchases information about a manifested disease, disorder, or pathological condition of an employee whose family member is also employed by the District or who is receiving health or genetic services on a voluntary basis. For example, the District does not violate the GINA regulations by asking someone whose sister also works for the District to take a post-offer medical examination that does not include requests for genetic information. *29 CFR 1635.8(c)*

**Confidentiality**

A district that possesses genetic information in writing about an employee must maintain such information on forms and in medical files (including where the information exists in electronic forms and files) that are separate from personnel files. The District must treat such information as a confidential medical record. The District may

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maintain genetic information about an employee in the same file in which it maintains confidential medical information under the ADA.

Genetic information placed in personnel files before November 21, 2009, need not be removed. The District will not be liable under the GINA regulations for the mere existence of the information in the file. However, the prohibitions on use and disclosure of genetic information apply to all genetic information that meets the statutory definition, including genetic information requested, required, or purchased before November 21, 2009.

Genetic information that the District receives orally need not be reduced to writing but may not be disclosed, except as permitted by 29 CFR part 1635.

Genetic information that the District acquires through sources that are commercially and publicly available, as provided by 29 CFR 1635.8(b)(4), is not considered confidential genetic information but may not be used to discriminate against an individual.

*29 CFR 1635.9(a)*

Disclosure  
Permitted

A district that possesses any genetic information, regardless of how the District obtained the information (except for genetic information acquired through commercially and publicly available sources), may disclose the information:

1. To the employee (or family member if the family member is receiving genetic services) about whom the information pertains upon receipt of the employee's written request;
2. To an occupational or other health researcher if the research is conducted in compliance with the regulations and protections at 45 CFR part 46;
3. In response to an order of a court. The District may disclose only the genetic information expressly authorized by the order. If the order was secured without the knowledge of the employee to whom the information refers, the District shall inform the employee of the order and any genetic information that was disclosed pursuant to the order;
4. To government officials investigating compliance with Title II of GINA if the information is relevant to the investigation;
5. To the extent the information is disclosed in support of an employee's compliance with the certification provisions of the FMLA or certification requirements under state family and medical leave laws; or

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6. To a federal, state, or local public health agency, only with regard to information about the manifestation of a disease or disorder that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness, provided that the individual whose family member is the subject of the disclosure is notified of such disclosure.

*29 CFR 1635.9(b)*

Relationship to  
HIPAA Privacy  
Regulations

The GINA regulations do not apply to the use or disclosure of genetic information that is protected health information subject to regulation under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). *29 CFR 1635.9(c)* [See CRD(LEGAL)]

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**Definitions**

“Criminal history clearinghouse” (clearinghouse) means the electronic clearinghouse and subscription service established by the Department of Public Safety (DPS) to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. *Gov’t Code 411.0845(a), (h)*

“Criminal history record information” (CHRI) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. *Gov’t Code 411.082(2)*

“National criminal history record information” (NCHRI) means criminal history record information obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (FBI) under Government Code 411.087. *Education Code 22.081(2)*

“Request for CHRI” is the processing and entry of a person’s complete set of fingerprints in DPS’s tenprint database and the comparison of those prints to DPS’s latent print database and if authorized the entry into FBI’s tenprint and comparison to the FBI’s latent print database. *37 TAC 27.172*

**Participation in the  
Criminal History  
Clearinghouse**

The purpose of the clearinghouse is to:

1. Provide authorized entities with the Texas and FBI fingerprint-based criminal history results.
2. Provide authorized entities with subscription and notification service to disseminate updated criminal history information.

Districts shall only submit a request for CHRI on a person who has authorized the access of their information.

Districts may subscribe to a person in the clearinghouse, if the entity has the authority to view the record. Entities shall unsubscribe from a person when it no longer has authority to view a record.

Districts shall validate their subscriptions in accordance with DPS policies. “Validation” is a process whereby the subscriber reviews a subscription to determine whether they are still authorized to receive CHRI on that individual and updates the subscription accordingly. Validations are required on a yearly basis.

Districts shall maintain compliance with the FBI Criminal Justice Information Services Security Policy. Districts shall allow DPS and

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the FBI to conduct audits of their clearinghouse accounts to prevent any unauthorized access, use, or dissemination of the information.

*37 TAC 27.171, .172(8), .174*

**Certified Persons**

The State Board for Educator Certification (SBEC) shall review the NCHRI of a person who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by a district. *Education Code 22.0831(c)*

**Noncertified  
Employees**

Applicability

This section applies to a person who is not an applicant for or holder of a certificate from SBEC and who, on or after January 1, 2008, is offered employment by:

1. A district; or
2. A shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.

[For noncertified employees of a district or shared services arrangement hired before January 1, 2008, see All Other Employees, below.]

Information to DPS  
and TEA

Before or immediately after employing or securing the services of a person subject to this section, a district shall send or ensure that the person sends to DPS information that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

A district shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI of the person and notify the district if the person may not be hired or must be discharged under Education Code 22.085.

Employment  
Pending Review

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

Criminal History

A district shall obtain all CHRI that relates to a person subject to this section through the clearinghouse and shall subscribe to the CHRI of that person. A district may require the person to pay any fees related to obtaining the CHRI.

*Education Code 22.0833; 19 TAC 153.1109(d)*

**Substitute Teachers**

This section applies to a person who is a substitute teacher for a district or shared services arrangement.

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Applicability	For purposes of the CHRI review requirements, a “substitute teacher” is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.
Information to DPS and TEA	<p>A district shall send or ensure that a person to whom this section applies sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.</p> <p>A district shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the district if the person:</p> <ol style="list-style-type: none"><li>1. May not be hired or must be discharged as provided by Education Code 22.085; or</li><li>2. May not be employed as a substitute teacher because the person’s educator certification has been revoked or is suspended.</li></ol>
Employment Pending Review	After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person’s CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.
Criminal History	<p>A district shall obtain all CHRI that relates to a person to whom this section applies through the clearinghouse. A district may require the person to pay any fees related to obtaining the CHRI.</p> <p><i>Education Code 22.0836; 19 TAC 153.1101(5), .1111(d)</i></p>
<b>Student Teachers</b>	
Applicability	This section applies to a person participating in an internship consisting of student teaching to receive a teaching certificate.
Criminal History	<p>A student teacher may not perform any student teaching until:</p> <ol style="list-style-type: none"><li>1. The student teacher has provided to a district a driver’s license or another form of identification containing the person’s photograph issued by an entity of the United States government; and</li><li>2. The district has obtained from DPS all CHRI that relates to a student teacher. A district may also obtain CHRI relating to a student teacher from any other law enforcement agency, criminal justice agency, or private consumer reporting agency. A district may require a student teacher to pay any costs related to obtaining the CHRI.</li></ol> <p><i>Education Code 22.0835</i></p>

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**Coordination of Efforts**

TEA, SBEC, a district, and a shared services arrangement may coordinate as necessary to ensure that criminal history reviews authorized or required under Education Code Chapter 22, Subchapter C are not unnecessarily duplicated. *Education Code 22.0833(h)*

**All Other Employees**

A district shall obtain CHRI that relates to a person who is not subject to an NCHRI review under Education Code Chapter 21, Subchapter C and who is an employee of:

1. The district; or
2. A shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present.

A district may obtain the CHRI from:

1. DPS;
2. A law enforcement or criminal justice agency; or
3. A private consumer reporting agency [see Consumer Credit Reports, below].

*Education Code 22.083(a), (a-1); Gov't Code 411.097*

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**Note:** For criminal history record provisions regarding volunteers, see GKG. For provisions on employees of entities that contract with a district, see CJA.

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**Confidentiality of Record**

CHRI that a district obtains from DPS, including any identification information that could reveal the identity of a person about whom CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of the district; and
2. May be disclosed or used by the district only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, "criminal history record" information does not refer to any specific document provided by DPS, but to the information contained, wholly or partly, in a document's original form or any subsequent form or use.

A district or an individual may not confirm the existence or nonexistence of CHRI to any person who is not eligible to receive the information.

*Gov't Code 411.084*

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CHRI obtained by a district, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, TEA, or SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

An employee of a district may request from the district a copy of any CHRI related to that employee that the district has obtained from DPS. The district may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI.

*Gov't Code 411.097(d), (f)*

Destruction of CHRI     A district shall destroy CHRI obtained from DPS on the earlier of:

1. The date the information is used for the authorized purpose; or
2. The first anniversary of the date the information was originally obtained.

*Gov't Code 411.097(d)(3)*

**Confidentiality of  
Information Obtained  
from Applicant or  
Employee**

A district may not release information collected about a person in order to obtain CHRI, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);
2. By court order; or
3. With the consent of the person who is the subject of the information.

In addition, the information is not subject to disclosure under Government Code Chapter 522 (Public Information Act).

The district shall destroy the information not later than the first anniversary of the date the information is received.

*Education Code 22.08391*

**Unauthorized  
Disclosure of CHRI**

A person commits a Class B misdemeanor if the person knowingly or intentionally:

1. Obtains CHRI in an unauthorized manner, uses the information for an unauthorized purpose, or discloses the information to a person who is not entitled to the information; or
2. Violates a DPS rule adopted under Government Code Chapter 411, Subchapter F.

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A person commits a second degree felony if the person:

1. Obtains, uses, or discloses CHRI for remuneration or for the promise of remuneration; or
2. Employs another person to obtain, use, or disclose CHRI for remuneration or for the promise of remuneration.

*Gov't Code 411.085*

**Refusal to Hire  
Convicted  
Applicants**

A district shall refuse to hire an applicant for employment if the district obtains information through a CHRI review that:

1. The employee or applicant has been convicted of:
  - a. A felony under Penal Code Title 5;
  - b. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
  - c. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs a or b; and
2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.

**Exception**

However, a district is not required to refuse to hire an applicant if the person committed an offense under Title 5, Penal Code and:

1. The date of the offense is more than 30 years before the date the person's employment will begin; and
2. The applicant for employment satisfied all terms of the court order entered on conviction.

**Certification to  
Commissioner**

Each school year, the superintendent shall certify to the commissioner that the district has complied with the above provisions.

**Sanctions**

SBEC may impose a sanction on an educator who does not refuse to hire an applicant if the educator knew that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with Education Code 21.009(e), or knew or should have known, through a CHRI review, that the applicant has been convicted of an offense described above.

SBEC may impose a sanction on a superintendent who falsely or inaccurately certified to the commissioner that the district had complied with Education Code 22.085. [See Certification to Commissioner, above]

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Termination for Failure to Disclose	<p>A district may discharge an employee if the district obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to the district. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation).</p> <p><i>Education Code 22.085; 19 TAC 249.15(b)(12), (14)</i> [See DF for Discharge of Convicted Employees]</p>
<b>Consumer Credit Reports</b> Definitions	<p>"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.</p> <p>"Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person's eligibility for employment.</p> <p>"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.</p> <p>"Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.</p> <p><i>15 U.S.C. 1681a</i></p>
Obtaining Reports	<p>A district may not procure a consumer report for employment purposes unless:</p> <ol style="list-style-type: none"><li>1. The district has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and</li><li>2. The applicant or employee has authorized in writing the procurement of the consumer report.</li></ol>
Adverse Action	<p>Before taking any adverse action based on the consumer report, a district shall provide the applicant or employee a copy of the consumer report and a written description of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.</p> <p><i>15 U.S.C. 1681b(b)(2)</i></p>
Address Discrepancies	<p>"Notice of address discrepancy" means a notice sent to a user by a consumer reporting agency that informs the user of a substantial</p>

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difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

A district must develop and implement reasonable policies and procedures designed to enable the district, when it receives a notice of address discrepancy, to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report.

If a district regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the district must also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which the district has reasonably confirmed is accurate, to the consumer reporting agency.

*16 C.F.R. 641.1*

Disposal of Records

A district must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

"Dispose" includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

*16 C.F.R. 682.3*

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**Disqualifying  
Offenses**

The District shall obtain criminal history record information on final candidates for employment. All District positions have the potential for contact with students. The District shall disqualify from employment a person whose criminal history indicates that the person poses a threat to students or employees. Consistent with business necessity, the District shall also disqualify from employment a person whose criminal history is otherwise inconsistent with the job duties of the position for which the person is being considered.

**Individualized  
Assessment**

The District shall perform an individualized assessment of criminal history record information when determining a person's eligibility for employment in a specific position. The District shall take into account a variety of factors, including the following:

1. The nature of the offense;
2. The age of the person when the crime was committed;
3. The date of the offense and how much time has elapsed;
4. The adjudication of the offense (e.g., whether the person was found guilty by a trier of fact, pled guilty, entered a no contest plea, or received deferred adjudication);
5. The nature and responsibilities of the job sought;
6. The accuracy of the person's disclosure of his or her criminal history during the selection process;
7. The effect of the conduct on the overall educational environment; and
8. Any further information provided by the person concerning his or her criminal history record.

**Arrests**

The fact of an arrest alone does not establish that criminal conduct has occurred, and the District shall not disqualify a person based solely on an arrest. The District may make an employment decision based on the conduct underlying the arrest if the conduct makes the person unfit for the position in question.

**SBEC Notification**

If a candidate for a position has a reported criminal history, and the candidate is certified by the State Board for Educator Certification (SBEC), the District shall report the criminal history to SBEC.

**Credit History**

The District shall obtain credit history information on a candidate for employment only when the credit history is related to the position for which the person is being considered. The District shall comply with the Fair Credit Reporting Act before obtaining a job-related credit history. [See DBAA(LEGAL)]

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**Prohibited Activities  
by Public Servants—  
State Law**

“Public servant” means a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government, even if the person has not yet qualified for office or assumed his or her duties. *Penal Code 1.07(a)(41)(A), (E)*

Bribery

A person commits an offense if the person intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another, any benefit:

1. As consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant;
2. As consideration for a violation of a duty imposed by law on a public servant; or
3. That is a political contribution as defined by Election Code Title 15 or an expenditure made and reported in accordance with Government Code Chapter 305 (regarding registration of lobbyists), if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

“Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

*Penal Code 36.01(3), .02*

Illegal Gifts

A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the public servant’s discretion. *Penal Code 36.08(d)*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under the provisions above may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(d), (i)*

*Exceptions*

Illegal Gifts does not apply to:

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1. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which the public servant gives legitimate consideration in a capacity other than as a public servant;
2. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
3. A benefit to a public servant required to file a statement under Government Code Chapter 572 or a report under Election Code Title 15 that is derived from a function in honor or appreciation of the recipient if:
  - a. The benefit and the source of any benefit in excess of \$50 is reported in the statement; and
  - b. The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;
4. A political contribution as defined by Election Code Title 15;
5. An item with a value of less than \$50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;
6. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or
7. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

*Penal Code 36.10*

Honoraria and  
Expenses

A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the person's official position or duties. This provision does not prohibit a public servant from accepting transportation and lodging expenses or meals in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent those services are more than merely perfunctory. *Penal Code 36.07*

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**Abuse of Official  
Capacity**

A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly violates a law relating to the public servant's office or employment, or misuses government property, services, personnel, or any other thing of value, belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment. *Penal Code 39.02(a)*

"Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant. *Penal Code 39.01(1)*

"Misuse" means to deal with property contrary to:

1. An agreement under which the public servant holds the property;
2. A contract of employment or oath of office of a public servant;
3. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
4. A limited purpose for which the property is delivered or received.

*Penal Code 39.01(2)*

**Misuse of Official  
Information**

A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office or employment and that has not been made public, the person:

1. Acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
2. Speculates or aids another to speculate on the basis of the information; or
3. As a public servant, including as a school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, the public servant discloses or uses information for a nongovernmental purpose that:

1. The person has access to by means of the person's office or employment; and

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2. Has not been made public.

“Information that has not been made public” means any information to which the public does not generally have access, and that is prohibited from disclosure under Government Code Chapter 552 (the Public Information Act).

*Penal Code 39.06(a), (b), (d)*

**Instructional  
Materials Violations  
— Commissions**

An administrator or teacher commits an offense if the person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated. *Education Code 31.152(a)*

**Instructional  
Materials Violations  
— Conflict**

An administrator or teacher commits an offense if the person accepts a gift, favor, or service that:

1. Is given to the person or the person’s school;
2. Might reasonably tend to influence the person in the selection of instructional materials or technological equipment; and
3. Could not be lawfully purchased with state instructional material funds.

“Gift, favor, or service” does not include staff development, in-service, or teacher training; or ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

*Education Code 31.152(b)–(d)*

**Instructional  
Materials Violations  
— Purchase and  
Distribution**

A person commits a Class C misdemeanor offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials for the public schools. *Education Code 31.153*

**Holding Civil Office**

No person shall hold or exercise at the same time more than one civil office of emolument, except for offices listed in the constitutional provision, unless otherwise specifically provided. *Tex. Const., Art. XVI, Sec. 40(a)*

A position in or membership in the Texas military forces is not considered to be a civil office of emolument. *Gov’t Code 437.203*

Individuals who receive all or part of their compensation either directly or indirectly from funds of the state of Texas and who are not state officers shall not be barred from serving as members of the governing bodies of school districts (other than those in which they are employed), cities, towns, or other local governmental districts. Such individuals may not receive a salary for serving as members of such governing bodies, except that a schoolteacher, retired

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CONFLICT OF INTEREST

DBD  
(LEGAL)

schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district created under Section 59, Article XVI, or Section 52, Article III. *Tex. Const., Art. XVI, Sec. 40(b)*

**Conflicts Disclosure  
Statement**

A local government officer shall file a conflicts disclosure statement with respect to a vendor if the vendor enters into a contract with the district or the district is considering entering into a contract with the vendor; and the vendor:

1. Has an employment or other business relationship with the local government officer or a family member of the officer, and the business relationship results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:
  - a. A contract between the district and the vendor has been executed; or
  - b. The district is considering entering into a contract with the vendor;
2. Has given to the local government officer or a family member of the officer one or more gifts, as defined by law, and the gift or gifts have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
  - a. A contract between the district and the vendor has been executed; or
  - b. The district is considering entering into a contract with the vendor; or
3. Has a family relationship with the local government officer.

A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is a political contribution as defined by Title 15, Election Code, or food accepted as a guest.

*Local Gov't Code 176.003(a)–(a-1)*

**Definitions**

“Local government officer” means a member of the board; the superintendent; or an agent (including an employee) of the district who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Local Gov't Code 176.001(1), (4)*

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“Gift” means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. *Local Gov’t Code 176.001(2-b)*

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**Note:** For additional provisions and definitions relating to conflict disclosure statements, see BBFA(LEGAL).

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**Personal Services  
Performed by  
Superintendent**

A superintendent of a school district may not receive any financial benefit for personal services performed by the superintendent for any business entity that conducts or solicits business with the district. Any financial benefit received by a superintendent for performing personal services for any other entity, including a school district, open-enrollment charter school, regional education service center, or public or private institution of higher education, must be approved by the board on a case-by-case basis in an open meeting. The receipt of reimbursement for a reasonable expense is not considered a financial benefit. *Education Code 11.201(e)*

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**Note:** See also CBB for requirements when federal funds are involved.

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EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
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**Note:** For conflicts of interest and gifts and gratuities related to federal grants and awards, see CB and CBB.

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**Disclosure—General  
Standard**

An employee shall disclose to his or her immediate supervisor a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.

**Specific Disclosures**  
Substantial Interest

The Superintendent shall file an affidavit with the Board President disclosing a substantial interest, as defined by Local Government Code 171.002, in any business or real property that the Superintendent or any of his or her relatives in the first degree may have.

Any other employee who is in a position to affect a financial decision involving any business entity or real property in which the employee has a substantial interest, as defined by Local Government Code 171.002, shall file an affidavit with the Superintendent; however, the employee shall not be required to file an affidavit for the substantial interest of a relative.

Interest in Property

The Superintendent shall be required to file an affidavit disclosing interest in property in accordance with Government Code 553.002.

Annual Financial  
Management  
Report

The Superintendent, as the executive officer of the District, shall provide to the District in a timely manner information necessary for the District's annual financial management report.

[See BBFA]

**Gifts**

An employee shall not accept or solicit any gift, favor, service, or other benefit that could reasonably be construed to influence the employee's discharge of assigned duties and responsibilities. [See CAA, CB, and CBB]

**Endorsements**

An employee shall not recommend, endorse, or require students to purchase any product, material, or service in which the employee has a financial interest or that is sold by a company that employs or retains the District employee during nonschool hours. No employee shall require students to purchase a specific brand of school supplies if other brands are equal and suitable for the intended instructional purpose.

**Sales**

An employee shall not use his or her position with the District to attempt to sell products or services.

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
CONFLICT OF INTEREST

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(LOCAL)

**Nonschool  
Employment**

An employee shall disclose in writing to his or her immediate supervisor any outside employment that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.

Private Tutoring

An employee shall disclose in writing to his or her immediate supervisor any private tutoring of District students for pay.

<b>Employment Policies</b>	<p>A board shall adopt a policy providing for the employment and duties of district personnel. The policy shall provide that:</p> <ol style="list-style-type: none"><li>1. A board employs and evaluates the superintendent;</li><li>2. A superintendent has sole authority to make recommendations to a board regarding the selection of all personnel, except that the board may delegate final authority for those decisions to the superintendent [see Superintendent Recommendation, below];</li><li>3. Each principal must approve each teacher or staff appointment to the principal's campus as provided by Education Code 11.202 [see DK and DP];</li><li>4. Notice will be provided of vacant positions [see Posting of Vacancies, below]; and</li><li>5. Each employee has the right to present grievances to the board. [See Grievances, below]</li></ol> <p><i>Education Code 11.1513</i></p>
Tax Identifier	<p>A board shall adopt a policy prohibiting the use of social security numbers as employee identifiers other than for tax purposes [see Social Security Numbers, below]. <i>Education Code 11.1514</i> [See DBA]</p>
Contract Positions	<p>A board shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply. <i>Education Code 21.002(c)</i> [See DCB and DCC]</p>
Delegation of Authority	<p>A district's employment policy may specify the terms of district employment or delegate to the superintendent the authority to determine the terms of employment with the district. <i>Education Code 11.1513(c)</i> [For nepotism implications, see BBFB and DBE]</p>
<b>Internal Auditor</b>	<p>If a district employs an internal auditor, the board shall select the internal auditor and the internal auditor shall report directly to the board. <i>Education Code 11.170</i> [See CFC]</p>
<b>Superintendent Recommendation</b>	<p>A board may accept or reject a superintendent's recommendation regarding the selection of district personnel and shall include the board's acceptance or rejection in the minutes of the board's open meeting, in the certified agenda or tape recording of a closed meeting, or in the recording required under Government Code 551.125 or 551.127, as applicable. If a board rejects a superintendent's recommendation, the superintendent shall make alternative recommendations until the board accepts a recommendation. <i>Education Code 11.1513(b)</i></p>

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**Pre-employment  
Affidavit**

An applicant for a certified or licensed position [see Professional Personnel at DBA(LEGAL)] with a school district, including a district of innovation, must submit, using a form adopted by TEA, a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.

An applicant who answers affirmatively concerning an inappropriate relationship with a minor must disclose in the affidavit all relevant facts pertaining to the charge, adjudication, or conviction, including, for a charge, whether the charge was determined to be true or false.

An applicant is not precluded from being employed based on a disclosed charge if the district determines based on the information disclosed in the affidavit that the charge was false.

A determination that an employee failed to disclose required information is grounds for termination of employment.

The State Board for Educator Certification (SBEC) may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant for a position described by Education Code 21.003(a) or (b) despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

*Education Code 21.009*

**Posting of Vacancies**

A district's employment policy must provide that not later than the tenth school day before the date on which a district fills a vacant position for which a certificate or license is required as provided by Education Code 21.003 [see DBA], other than a position that affects the safety and security of students as determined by the board, the district must provide to each current district employee:

1. Notice of the position by posting the position on:
  - a. A bulletin board at:
    - (1) A place convenient to the public in the district's central administrative office, and
    - (2) The central administrative office of each campus during any time the office is open; or
  - b. The district's internet website, if the district has a website; and
2. A reasonable opportunity to apply for the position.

*Education Code 11.1513(d)*

EMPLOYMENT PRACTICES

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Exception	If, during the school year, a district must fill a vacant position held by a teacher, as defined by Education Code 21.201 [see DCB], in less than ten school days, the district must provide notice of the position in the manner described above as soon as possible after the vacancy occurs. However, a district is not required to provide the notice for ten school days before filling the position or to provide a reasonable opportunity to apply for the position. <i>Education Code 11.1513(e)</i>
<b>Grievances</b>	<p>A district's employment policy must provide each employee with the right to present grievances to the board. The policy may not restrict the ability of an employee to communicate directly with a member of the board regarding a matter relating to the operation of a district, except that the policy may prohibit ex parte communication relating to:</p> <ol style="list-style-type: none"><li>1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and</li><li>2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the board.</li></ol> <p><i>Education Code 11.1513(i)–(j)</i> [See DGBA]</p>
<b>Transfers</b>	A district's employment policy may include a provision for providing each current district employee with an opportunity to participate in a process for transferring to another school in or position with the district. <i>Education Code 11.1513(c)(3)</i> [See DK]
<b>Contract Employees</b>	A district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a probationary contract, a continuing contract, or a term contract. A district is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. <i>Education Code 21.002</i>
"Classroom Teacher"	"Classroom teacher" means an educator who is employed by a district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher's aide or a full-time administrator. <i>Education Code 5.001(2)</i>
Length of Contract	A contract between a district and an educator must be for a minimum of ten months of service. An educator employed under a ten-month contract must provide a minimum of 187 days of service. The commissioner of education may reduce the number of days of service, but such a reduction by the commissioner does not reduce an educator's salary. <i>Education Code 21.401</i>

**Educational Aides**

A board shall establish a plan to encourage the hiring of educational aides who show a willingness to become certified teachers. Education Code 54.363(f)

**Employment of Retirees**

A district shall file a monthly certified statement of employment of a retiree in the form and manner required by TRS. A district shall inform TRS of changes in status of the district that affect the district's reporting responsibilities.

The certified statement must include information regarding:

1. Employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003, and are performing duties or providing services on behalf of or for the benefit of the district that employees of the district would otherwise perform or provide; and
2. Retirees who retired within twelve full, consecutive calendar months of the month of the monthly certified statement and are performing duties or providing services for or on behalf of the district that employees of the district would otherwise perform or provide, and are:
  - a. Waiving, deferring, or forgoing compensation for the services or duties;
  - b. Performing the duties or providing the services as an independent contractor; or
  - c. Serving as a volunteer without compensation and performing the same duties or providing the same services for a reporting entity that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

A district that fails to attain a completed status for the monthly certified statement as required by 34 Administrative Code 31.2 shall pay to TRS, in addition to the required employer surcharges and any applicable penalty interest on the unpaid amounts, the late fee established in 34 Administrative Code 31.2(d) for each business day that the monthly certified statement fails to attain a completed status.

An administrator of a district who is responsible for filing the statement, and who knowingly fails to file the statement, commits an offense.

*Gov't Code 824.6022, 825.403(k); 34 TAC 31.2*

EMPLOYMENT PRACTICES

DC  
(LEGAL)

**Former Board  
Member Employment**

A board member is prohibited from accepting employment with the district until the first anniversary of the date the board member's membership on a board ends. *Education Code 11.063* [See BBC]

**New Hires**  
I-9 Forms

A district shall ensure that an employee properly completes section 1—"Employee Information and Verification"—on Form I-9 at the time of hire.

A district must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:

1. Within three business days of initial hiring. If a district hires an individual for employment for a duration of less than three business days, the district must verify employment at the time of hire. A district shall not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times. When a district rehires an individual, the district may, in lieu of completing a new I-9, inspect a previously completed I-9 executed within three years of the date of rehire, to determine whether the individual is still eligible to work.
2. For an individual whose employment authorization expires, not later than the date of expiration.

*8 C.F.R. 274a.2(b)(1)(ii), (iii), (vii), (viii)*

**New Hire Reporting**

A district shall furnish to the Directory of New Hires (Texas Attorney General's Office) a report that contains the name, address, and social security number of each newly hired employee. The report shall also contain a district's name, address, and employer identification number.

A district may also provide, at its option, the employee's date of hire, date of birth, expected salary or wages, and the district's payroll address for mailing of notice to withhold child support.

A district shall report new hire information on a Form W-4 or an equivalent form, by first class mail, telephonically, electronically, or by magnetic media, as determined by the district and in a format acceptable to the attorney general.

**Deadline**

New hire reports are due:

1. Not later than 20 calendar days after the date a district hires the employee; or
2. In the case of a district transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

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	<p>New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.</p>
<i>Penalties</i>	<p>A district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.</p> <p><i>42 U.S.C. 653a(b), (c); Family Code 234.101–.105; 1 TAC 55, Subch. I</i></p>
<b>Social Security Numbers</b>	<p>A board shall adopt a policy prohibiting the use of the social security number of an employee of the district as an employee identifier other than for tax purposes. <i>Education Code 11.1514</i> [See DBA]</p>
Federal Law	<p>A district shall not deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number.</p>
<i>Exceptions</i>	<p>The federal law does not apply to:</p> <ol style="list-style-type: none"><li>1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;</li><li>2. Any disclosure to a district maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or</li><li>3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver's license, or motor vehicle registration law within a district's jurisdiction.</li></ol>
Statement of Uses	<p>A district that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.</p> <p><i>Privacy Act of 1974, Pub. L. No. 93-579, Sec. 7, 88 Stat. 1896, 1897 (1974)</i></p>
<b>Employment Assistance Prohibited</b>	<p>A district that receives Title I funds shall have regulations or policies that prohibit any individual who is a school employee, contractor, or agent, or a district, from assisting a school employee in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or district knows, or has probable cause to believe, that such school employee engaged in sexual misconduct regarding a minor or student in violation of the law.</p>
Federal Law	

EMPLOYMENT PRACTICES

DC  
(LEGAL)

This requirement shall not apply if the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the implementing regulations under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations; and:

1. The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee engaged in sexual misconduct regarding a minor or student in violation of the law;
2. The school employee has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or
3. The case or investigation remains open and there have been no charges filed against, or indictment of, the school employee within four years of the date on which the information was reported to a law enforcement agency.

*20 U.S.C 7926 [See also CJ]*

**State Law**

SBEC may suspend or revoke a certificate, impose other sanctions against the person, or refuse to issue a certificate to the person if:

1. The person assists another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and
2. The person knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law.

The commissioner may require a school district to revoke or decline to issue a school district teaching permit under Education Code 21.055 issued to or requested by a person subject to SBEC action above.

*Education Code 21.0581; 19 TAC 249.15(b)(13)*

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(LOCAL)

<b>Personnel Duties</b>	The Superintendent shall define the qualifications, duties, and responsibilities of all positions and shall ensure that job descriptions are current and accessible to employees and supervisors.
<b>Posting Vacancies</b>	The Superintendent or designee shall establish guidelines for advertising employment opportunities and posting notices of vacancies. These guidelines shall advance the Board's commitment to equal opportunity employment and to recruiting well-qualified candidates. Current District employees may apply for any vacancy for which they have appropriate qualifications.
<b>Applications</b>	<p>All applicants shall complete the application form supplied by the District. Information on applications shall be confirmed before a contract is offered for a contractual position and before hiring or as soon as possible thereafter for a noncontractual position.</p> <p>[For information related to the evaluation of criminal history records, see DBAA.]</p>
<b>Employment of Contractual Personnel</b>	<p>The Superintendent has sole authority to make recommendations to the Board regarding the selection of contractual personnel.</p> <p>The Board retains final authority for employment of contractual personnel. [See DCA, DCB, DCC, and DCE as appropriate]</p>
<b>Employment of Noncontractual Personnel</b>	The Board delegates to the Superintendent final authority to employ and dismiss noncontractual employees on an at-will basis. [See DCD]
<b>Employment Assistance Prohibited</b>	No District employee shall assist another employee of the District or of any school district in obtaining a new job if the employee knows, or has probable cause to believe, that the other employee engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. [See CJ for prohibitions relating to contractors and agents and DH(EXHIBIT) for the Educators' Code of Ethics.]

EMPLOYMENT PRACTICES  
TERM CONTRACTS

DCB  
(LEGAL)

**Term Contracts**

Unless employed under a probationary contract [see DCA] or a continuing contract [see DCC], a school district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a term contract as provided by Education Code Chapter 21, Subchapter E. *Education Code 21.002(a)*

**Definition**

In this policy, "teacher" means:

1. A superintendent;
2. A principal;
3. A supervisor;
4. A classroom teacher;
5. A school counselor;
6. Any other full-time professional employee who is required to hold a certificate issued under Education Code Chapter 21, Subchapter B [see DK(EXHIBIT)]; or
7. A nurse.

**Exclusions**

In this policy, the term "teacher" does not include a person who is not entitled to a probationary, continuing, or term contract under Education Code 21.002, an existing contract, or district policy.

*Education Code 21.201(1)*

District-Required  
Certification

If a district requires a person, by policy, job description, or contract, to hold a certificate issued under Education Code Chapter 21, Subchapter B, the district is required to employ the person under a term contract as provided by Education Code Chapter 21, Subchapter E. *Fields v. Alief Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 006-R10-10-2014 (2015)*

**Probationary  
Contract Required**

Before a teacher may be employed under a term contract, the teacher must be employed under a probationary contract for the period provided by Education Code Chapter 21, Subchapter C [see DCA]. *Education Code 21.202(a)*

Exception

The district may employ a person as a principal or classroom teacher under a term contract if the person has experience as a public school principal or classroom teacher, respectively, regardless of whether the person is being employed by the district for the first time or whether a probationary contract would otherwise be required under Education Code 21.102. *Education Code 21.202(b)*

**Contract Terms**

A term contract must be in writing and include the terms of employment prescribed by Education Code Chapter 21, Subchapter E. The board may include other provisions in a term contract that are

EMPLOYMENT PRACTICES  
TERM CONTRACTS

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consistent with that subchapter. Each term contract is subject to the approval of the board.

The board shall provide each term contract employee with a copy of the employee's contract.

*Education Code 21.204(a)–(d)*

Maximum Duration

Once an employee has completed the probationary contract period, the duration of a term contract may not exceed five school years. *Education Code 21.205*

**Employment Policies**

If the district has a website, the district shall place the board's employment policies on that website. At each school in the district, the board shall make a copy of the employment policies available for inspection at a reasonable time on request.

On request, the board shall also provide each term contract employee with a copy of the employment policies.

*Education Code 21.204(d)*

**Property Interest**

An employee does not have a property interest in a term contract beyond its term. *Education Code 21.204(e)*

EMPLOYMENT PRACTICES  
TERM CONTRACTS

DCB  
(LOCAL)

**Contracts Required  
by Law**

After any applicable probationary contract period required by the District, term contracts governed by Chapter 21 of the Education Code (educator term contracts) shall be provided to:

1. Any employees in positions required by statute to receive such contracts, including SBEC-certified employees serving full-time as principals, assistant principals, teachers, school counselors, diagnosticians, librarians, and athletic directors;
2. Full-time professional employees in other positions for which the District requires current SBEC certification; and
3. Full-time nurses.

**No Certification  
Required**

Educator term contracts shall also be provided for the following positions for which neither SBEC nor the District requires current SBEC certification: deputy superintendent and executive director of student operations.

[For District employees hired under a continuing contract, see also DCC]

COMPENSATION AND BENEFITS  
COMPENSATION PLAN

DEA  
(LEGAL)

**Minimum Salary  
Schedule —  
Educators**

A district shall pay each classroom teacher, full-time librarian, full-time school counselor, or full-time nurse not less than the minimum monthly salary, based on the employee's level of experience, specified in Education Code 21.402 and 19 Administrative Code 153.1021.

Definitions

*"Classroom  
Teacher"*

"Classroom teacher" means an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting, focusing on the delivery of the Texas Essential Knowledge and Skills, and who holds the relevant certificate from the State Board for Educator Certification (SBEC). Although noninstructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment, such as instructional planning and transition between instructional periods, should be applied to creditable classroom time.

*"Librarian"*

"Librarian" means an educator who provides full-time library services and holds the relevant certificate from SBEC.

*"Counselor"*

"Counselor" means an educator who provides full-time counseling and guidance services and holds the relevant certificate from SBEC.

*"Nurse"*

"Nurse" means an educator employed to provide full-time nursing and health-care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

*"Full-Time"*

"Full-time" means contracted employment for at least ten months (187 days) for 100 percent of the school day, in accordance with the definitions of school day in Education Code 25.082, employment contract in Education Code 21.002, and school year in Education Code 25.081.

*19 TAC 153.1022(a)*

Placement on  
Salary Schedule

The Commissioner's rules determine the experience for which a teacher, librarian, school counselor, or nurse is to be given credit in placing the teacher, librarian, school counselor, or nurse on the minimum salary schedule. A district shall credit the teacher, librarian, school counselor, or nurse for each year of experience, whether or not the years are consecutive. *Education Code 21.402(a), .403(c); 19 TAC 153.1022*

Employees  
Formerly on Career  
Ladder

A teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994–95 school year as long as the teacher or librarian is employed by the same district.

COMPENSATION AND BENEFITS  
COMPENSATION PLAN

DEA  
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In addition, a teacher or librarian who was on level two or three of the career ladder is entitled, as long as he or she is employed by the same district, to placement on the minimum salary schedule according to the guidelines at Education Code 21.403(d). *Education Code 21.402(f), .403(d)*

**Pay Increases**

A district shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. *Tex. Const. Art. III, Sec. 53*

Public Hearing—  
Contract Employees

A district may not pay an employee or former employee more than an amount owed under a contract with the employee unless the district holds at least one public hearing. Notice of the hearing must be given in accordance with notice of a public meeting under the Texas Open Meetings Act [see BE].

The board must state the following at the public hearing:

1. The source and exact amount of the payment;
2. The reason the payment is being offered including the public purpose that will be served by making the payment; and
3. The terms for distribution of the payment that effect and maintain the public purpose.

*Loc. Gov't Code 180.007*

**Salary Advances and Loans**

A district shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)*

**Designation of Compensation for Benefits**

An employee who is covered by a cafeteria plan or who is eligible to pay health-care premiums through a premium conversion plan may elect to designate a portion of the employee's compensation to be used as health-care supplementation. The amount designated may not exceed the amount permitted under federal law. *Education Code 22.103*

Use

An employee may use the compensation designated for health-care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health-care premiums through a premium conversion plan. *Education Code 22.106*

Annual Election

Each school year, an active employee must elect in writing whether to designate a portion of the employee's compensation to be used as health-care supplementation. The election must be made at the

COMPENSATION AND BENEFITS  
COMPENSATION PLAN

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same time that the employee elects to participate in a cafeteria plan, if applicable. *Education Code 22.105*

Definition

For purposes of the designation of compensation as health-care supplementation, "employee" means an active, contributing member of the Teacher Retirement System (TRS) who:

1. Is employed by a district;
2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);
3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insurance) or Chapter 1601 (state university employee health insurance); and
4. Is not an individual performing personal services for the district as an independent contractor.

*Education Code 22.101(2)*

**TRS Contributions  
for New Hires**

During each fiscal year, a district shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation of new members of the retirement system, during their first 90 days of employment.

"New member" means a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Government Code 822.003 and is reemployed on or after September 1, 2005.

On a monthly basis, a district shall:

1. Certify to TRS the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments under this section for the payroll periods; and
2. Retain information, as determined by TRS, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

A district must remit the amount required under this section to TRS at the same time the district remits the member's contribution. In computing the amount required to be remitted, a district shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

*Gov't Code 825.4041*

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**TRS Surcharge for  
Rehired Retirees**

TRS Fund  
Contributions

During each payroll period for which a retiree is reported, a district shall contribute to the retirement system for each retiree reported an amount based on the retiree's salary equal to the sum of:

1. The current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and
2. The current contribution amount authorized by the General Appropriations Act that the state would contribute for that retiree if the retiree were an active, contributing member.

*Gov't Code 825.4092(b)*

Health Insurance  
Contributions

In addition, each payroll period and for each rehired retiree who is enrolled in TRS Care (retiree group health insurance), a district shall contribute to the TRS Care trust fund an amount established by TRS. In determining the amount to be contributed by the district, TRS shall consider the amount a retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers.

Exception

A district is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005.

*Gov't Code 825.4092(c), (e); Insurance Code 1575.204(b)*

**Notice Regarding  
Earned Income Tax  
Credit**

Not later than March 1 of each year, a district shall provide employees with information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;
2. Electronically at the employee's last known e-mail address;
3. Through a flyer included, in writing or electronically, as a payroll stuffer; or
4. By first class mail to the employee's last known address.

A district may not satisfy this requirement solely by posting information in the workplace.

In addition, a district may provide employees with IRS publications and forms, or information prepared by the comptroller, relating to the earned income tax credit.

*Labor Code 104.001-.003*

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**Decreasing Pay**

The Commissioner has held that a district may reduce educator compensation if it gives sufficient warning of a possible reduction in pay when educators can still unilaterally resign from their contracts. A sufficient warning must be both formal enough and specific enough to give educators a meaningful opportunity to decide whether to continue employment with a district. *Brajenovich v. Alief Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 021-R10-1106 (2009)*

**Widespread Salary Reductions**

The following provisions apply only to a widespread reduction in the amount of annual salaries paid to classroom teachers in a district based primarily on district financial conditions rather than on teacher performance.

For any school year in which a district has reduced the amount of the annual salaries paid to classroom teachers from the amount paid for the preceding school year, the district shall reduce the amount of the annual salary paid to each district administrator or other professional employee by a percent or fraction of a percent that is equal to the average percent or fraction of a percent by which teacher salaries have been reduced.

*Education Code 21.4032*

A board may not reduce salaries until the district has complied with the requirements at Education Code 21.4022 [see Salary Reduction/Furlough Process, below]. *Education Code 21.4022*

**Furlough Program**

In accordance with district policy [see DFFA], a board may implement a furlough program and reduce the number of days of service otherwise required under Education Code 21.401 [see DC] by not more than six days of service during a school year if the Commissioner certifies that the district will be provided with less state and local funding for that year than was provided to the district for the 2010–11 school year. *Education Code 21.4021(a)*

A board may not implement a furlough program until the district has complied with the requirements at Education Code 21.4022 [see Salary Reduction/Furlough Process, below]. *Education Code 21.4022*

**Funding Levels**

Not later than July 1 of each year, the Commissioner shall determine for each district whether the estimated amount of state and local funding per student in weighted average daily attendance to be provided to the district under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the district for the 2010–11 school year. If the amount estimated to be provided is less, the

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	Commissioner shall certify the percentage decrease in funding to be provided to the district. <i>Education Code 42.009</i>
<i>Salaries</i>	Notwithstanding Education Code 21.402 (minimum salary schedule), a board may reduce the salary of an employee who is furloughed in proportion to the number of days by which service is reduced. Any reduction in the amount of the annual salary must be equally distributed over the course of the employee's current contract with the district.
<i>Furlough Days</i>	A furlough program must subject all contract personnel to the same number of furlough days. An educator may not be furloughed on a day that is included in the number of days of instruction required under Education Code 25.081 [see EB]. Implementation of a furlough program may not result in an increase in the number of required teacher workdays. An educator may not use personal, sick, or any other paid leave while the educator is on a furlough.
<i>Contract Resignation</i>	If a board adopts a furlough program after the date by which a teacher must give notice of resignation from a probationary, term, or continuing contract [see DFE], an employee who subsequently resigns is not subject to sanctions imposed by SBEC.
<i>No Appeal</i>	A decision by a board to implement a furlough program is final and may not be appealed and does not create a cause of action or require collective bargaining.  <i>Education Code 21.4021</i>
Salary Reduction / Furlough Process	A board may not implement a furlough program under Education Code 21.4021 or reduce salaries until the district has complied with the requirements below.
<i>Employee Involvement</i>	A district must use a process to develop a furlough program or other salary reduction proposal, as applicable, that: <ol style="list-style-type: none"><li>1. Includes the involvement of the district's professional staff; and</li><li>2. Provides district employees with the opportunity to express opinions regarding the furlough program or salary reduction proposal, as applicable, at the public meeting described below.</li></ol>
<i>Public Meeting</i>	A board must hold a public meeting at which the board and district administration present: <ol style="list-style-type: none"><li>1. Information regarding the options considered for managing the district's available resources, including consideration of a tax rate increase and use of the district's available fund balance;</li></ol>

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2. An explanation of how the district intends, through implementation of a furlough program or salary reductions, as applicable, to limit the number of district employees who will be discharged or whose contracts will not be renewed. Any explanation of a furlough program must state the specific number of furlough days proposed to be required; and
3. Information regarding the local option residence homestead exemption.

The public and district employees must be provided with an opportunity to comment at the public meeting.

*Education Code 21.4022*

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The Superintendent shall recommend an annual compensation plan for all District employees. The compensation plan may include wage and salary structures, stipends, benefits, and incentives. [See also DEAA] The recommended plan shall support District goals for hiring and retaining highly qualified employees. The Board shall review and approve the compensation plan to be used by the District. The Board shall also determine the total compensation package for the Superintendent. [See BJ series]

**Pay Administration**

The Superintendent shall implement the compensation plan and establish procedures for plan administration consistent with the budget. The Superintendent or designee shall classify each job title within the compensation plan based on the qualifications, duties, and market value of the position.

**Annualized Salary**

The District shall pay all salaried employees over 12 months in equal monthly or bimonthly installments, regardless of the number of months employed during the school year. Salaried employees hired during the school year shall be paid in accordance with administrative regulations.

**Pay Increases**

The Superintendent shall recommend to the Board an amount for employee pay increases as part of the annual budget. The Superintendent or designee shall determine pay adjustments for individual employees, within the approved budget following established procedures.

*Midyear Pay  
Increases*

Contract  
Employees

A contract employee's pay may be increased after performance on the contract has begun only if authorized by the compensation plan of the District or there is a change in the employee's job assignment or duties during the term of the contract that warrants additional compensation. Any such changes in pay that do not conform with the compensation plan shall require Board approval. [See DEA(LEGAL) for provisions on pay increases and public hearing requirements.]

Noncontract  
Employees

The Superintendent may grant a pay increase to a noncontract employee after duties have begun because of a change in the employee's job assignment or to address pay equity. The Superintendent shall report any such pay increases to the Board at the next regular meeting.

**Pay during Closing**

During an emergency closure, all employees shall continue to be paid for their regular duty schedule unless otherwise provided by Board action. Following an emergency closure, the Board shall adopt a resolution or take other Board action establishing the purpose and parameters for such payments. [See EB for the authority to close schools.]

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Premium Pay  
during Disasters

Nonexempt employees who are required to work during an emergency closing for a disaster, as declared by a federal, state, or local official or the Board, shall be paid at the rate of one and one-half times their regular rate of pay for all hours worked up to 40 hours per week. Overtime for time worked over 40 hours in a week shall be calculated and paid according to law. [See DEAB].

By resolution or other Board action, exempt employees who are required to work during an emergency may receive additional compensation.

The Superintendent or designee shall approve payments and ensure that accurate time records are kept of actual hours worked during emergency closings.

For employees, such as bus drivers, who may be needed by the city for evacuation purposes, the Superintendent shall be authorized to provide provisions to the employees to ensure safety of District employees and assets. The District shall seek reimbursement from the Federal Emergency Management Administration (FEMA) and/or city/county governments requesting the assistance.

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INCENTIVES AND STIPENDS

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**Incentive Grants—  
Contract Provision**

A district shall provide in employment contracts that qualifying employees may receive an incentive payment under an awards program established under Education Code Chapter 21, Subchapter O (Educator Excellence Award Program and Educator Excellence Innovation Program) if the district participates in the program. A district shall indicate that any incentive payment distributed is considered a payment for performance and not an entitlement as part of an employee's salary. *Education Code 21.415*

**Educator Excellence  
Innovation Program**

The Educator Excellence Innovation Program (EEIP) is a grant program under which a district may receive a competitive grant for the purposes of systematically transforming educator quality and effectiveness. TEA will give priority to districts that receive Title I funding and have at a majority of district campuses a student enrollment that is at least 50 percent educationally disadvantaged.

Eligibility

A district is eligible to apply for EEIP grant funds if the district:

1. Completes and submits a Notice of Intent to Apply to TEA by the date established by the Commissioner;
2. Complies with all assurances in the Notice of Intent to Apply and grant application;
3. Participates in the required technical assistance activities established by the Commissioner, including establishing leadership teams, master teachers, mentor teachers, and instructional coaches and developing career pathways;
4. Agrees to participate for four years; and
5. Complies with any other activities set forth in the program requirements.

An eligible district must submit an application in a form prescribed by the Commissioner. Each eligible applicant must meet all deadlines, requirements, and assurances specified in the application. The Commissioner may waive any eligibility requirements as specified in 19 Administrative Code 102.1073.

Local Plan

An eligible district that intends to participate in the EEIP shall submit a local educator excellence innovation plan to TEA. A local educator excellence innovation plan must address the elements at 19 Administrative Code 102.1073(e)(2).

A district must act pursuant to its local board policy [see DEAA (LOCAL)] for submitting a local educator excellence innovation plan and grant application to TEA. A local decision to approve and submit a plan and grant application may not be appealed to the Commissioner.

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A district may renew its local educator excellence innovation plan for three consecutive school years without resubmitting a full grant application to TEA. With TEA approval, a district may amend its local plan in accordance with 19 Administrative Code 102.1073(c) and (h) for each school year the district receives a program grant.

Use of Grant Funds

A district may use grant funds only to carry out purposes of the program as described at Education Code 21.7011, in accordance with the district's local plan, which may include the following specific methods or procedures:

1. Implementation and administration of a high-quality mentoring program for teachers in the first three years of classroom teaching using mentors who meet the qualifications prescribed by Education Code 21.458 [see MENTOR TEACHERS, below];
2. Implementation of a teacher evaluation system using multiple measures that include:
  - a. The results of classroom observation, which may include student comments;
  - b. The degree of student educational growth and learning; and
  - c. The results of teacher self-evaluation;
3. To the extent permitted under Education Code Chapter 25, Subchapter C, restructuring of the school day or school year to provide for embedded and collaborative learning communities for the purpose of professional development [see EC];
4. Establishment of an alternative teacher compensation or retention system; and
5. Implementation of incentives designed to reduce teacher turnover.

Waiver Request

A district may apply to the Commissioner in writing for a waiver to exempt the district or one or more district campuses from one or more of the statutory sections listed at Education Code 21.7061(a).

The application for the waiver must demonstrate:

1. Why waiving the identified section of the Education Code is necessary to carry out the purposes of the program;
2. Approval for the waiver by a vote of a majority of the members of the board;

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3. Approval for the waiver by a vote of a majority of the educators employed at each campus for which the waiver is sought; and
4. Evidence that the voting occurred during the school year and in a manner that ensured that all educators entitled to vote had a reasonable opportunity to participate in the voting.

Neither the board nor the superintendent may compel a waiver of rights under Education Code 21.7061.

Not later than April 1 of the year in which the waiver application is submitted, the Commissioner shall notify the district in writing whether the application has been granted or denied. A waiver expires when the waiver is no longer necessary to carry out the purposes of the program, in accordance with the district's local educator excellence innovation plan.

*Education Code Ch. 21, Subch. O; 19 TAC 102.1073*

**Mentor Teachers**

A district may assign a mentor teacher to each classroom teacher who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned. A teacher assigned as a mentor must:

1. To the extent practicable, teach in the same school;
2. To the extent practicable, teach the same subject or grade level, as applicable; and
3. Meet the qualifications prescribed by Commissioner's rules.

The Commissioner's rules must require that a mentor teacher:

1. Complete a research-based mentor and induction training program approved by the Commissioner;
2. Complete a training program provided by the district; and
3. Have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance.

A district may apply to the Commissioner for funds for a mentor teacher program. A district may use the funds only for providing:

1. Mentor teacher stipends;
2. Scheduled release time for mentor teachers and the classroom teachers to whom they are assigned for meeting and engaging in mentoring activities; and
3. Mentoring support through providers of mentor training.

*Education Code 21.458; 19 TAC 153.1011*

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**Master Teacher  
Grant Programs**

The Commissioner shall establish master reading, mathematics, technology, and science teacher grant programs to encourage teachers to become certified as master teachers and to work with other teachers and students to improve student performance. *Education Code 21.410–.413*

Application

A district may apply to the Commissioner for grants for each identified high-need campus to be used to pay year-end stipends to certified master teachers.

Use of Funds

Grant funds may be used only for the purpose of paying a year-end stipend to a master teacher whose primary duties are to teach reading, mathematics, technology, or science and to serve as a reading, mathematics, technology, or science teacher mentor for the amount of time and in the manner established by the district.

Payments

The Commissioner shall reduce payments to a district proportionately to the extent a teacher does not meet the requirements for a master teacher for the entire school year.

If a teacher qualifies as a master teacher for a partial month, a district's written policy will determine how the district counts the partial month, for example, as no month served or as an entire month served. Only whole months shall be entered on the application by a district on the teacher's behalf.

Education Code sections 21.410–.413 do not create a property right to a grant or stipend. A master teacher stipend is not considered in determining whether the district is paying the teacher the minimum monthly salary under Education Code 21.402.

Designation of  
Teacher

A district that employs more certified master teachers than the number of grants available shall designate which certified master teacher(s) to assign the duties required to receive the state stipends. The designation is based on a written policy adopted by the board. A district's decision is final and may not be appealed.

A district may not apportion among teachers a stipend paid with a grant the district receives under this program. A district may use local money to pay additional stipends in amounts determined by the district.

*Education Code 21.410–.413; 19 TAC Ch. 102, Subch. BB*

**Achievement  
Academy Stipends**

A stipend received by a teacher who attends a literacy achievement, mathematics achievement, or a reading-to-learn academy is not considered in determining whether a district is paying the teacher the minimum monthly salary under Education Code 21.402. *Education Code 21.4552(d), .4553(d), .4554(d)*

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A stipend received by a school counselor or teacher who attends a postsecondary education and career counseling academy under Education Code 33.009 is not considered in determining whether a district is paying the school counselor or teacher the minimum monthly salary under Education Code 21.402. *Education Code 33.009(h)*

**Retirement  
Incentives**

A district may not offer or provide a financial or other incentive to an employee to encourage the employee to retire from the Teacher Retirement System of Texas. *Education Code 22.007*

**Attendance  
Supplement**

A district shall not deny an educator a salary bonus or similar compensation given in whole or in part on the basis of educator attendance because of the educator's absence from school for observance of a religious holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20. *Education Code 21.406*

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**Stipend**

The Superintendent shall recommend a stipend pay schedule as part of the annual compensation plan of the District. [See DEA]

Supplemental  
Duties

The Superintendent or designee may assign noncontractual supplemental duties to personnel exempt under the Fair Labor Standards Act (FLSA), as needed. [See DK(LOCAL)] The employee shall be compensated for these assignments according to the compensation plan of the District.

**Incentive and  
Innovation Programs**

The Superintendent shall have authority to submit plans and grant applications for incentive and innovation programs to TEA or other granting organizations on behalf of the Board. Incentive plans shall address teacher eligibility, including any exclusions.

Locally developed incentive programs, if any, shall be addressed in the compensation plan of the District.

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**Fair Labor Standards  
Act**

Minimum Wage and  
Overtime

Unless an exemption applies, a district shall pay each of its employees not less than minimum wage for all hours worked. 29 *U.S.C. 206(a)(1)*

Unless an exemption applies, a district shall pay an employee not less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 in any workweek. 29 *U.S.C. 207(a)(1)*; 29 *C.F.R. pt. 778*

Breaks for  
Nonexempt  
Employees

Rest periods of up to 20 minutes must be counted as hours worked. Coffee breaks or time for snacks are rest periods, not meal periods. 29 *C.F.R. 785.18*

Bona fide meal periods of 30 minutes or more are not counted as hours worked if the employee is completely relieved from duty. The employee is not relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his or her desk is working while eating. It is not necessary that an employee be permitted to leave the premises if the employee is otherwise completely freed from duties during the meal period. 29 *C.F.R. 785.19*

Compensatory Time  
*Accrual*

Nonexempt employees may receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one and one-half hours for each hour of overtime work, pursuant to an agreement or understanding arrived at between the employer and employee before the performance of the work. Such agreement or understanding may be informal, such as when an employee works overtime knowing that the employer rewards overtime with compensatory time.

An employee may accrue not more than 240 hours of compensatory time. If the employee's overtime work included a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time. After the employee has reached these limits, the employee shall be paid overtime compensation for additional overtime work.

*Payment for  
Accrued Time*

Compensation paid to an employee for accrued compensatory time shall be paid at the regular rate earned by the employee at the time of payment. An employee who has accrued compensatory time off shall be paid for any unused compensatory time upon separation from employment at the rates set forth at 29 *U.S.C. 207(o)(4)*.

*Use*

An employee who has requested the use of compensatory time shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the district.

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The Fair Labor Standards Act (FLSA) does not prohibit a district from compelling the use of accrued compensatory time.

*29 U.S.C. 207(o); Christensen v. Harris County, 529 U.S. 576 (2000); Houston Police Officers' Union v. City of Houston, 330 F.3d 298 (5th Cir. 2003)*

Exempt Employees

The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative, or professional capacity. *29 U.S.C. 213(a)(1)*

*Academic  
Administrators*

The term "employee employed in a bona fide administrative capacity" includes an employee:

1. Compensated for services on a salary or fee basis at a rate of not less than \$455 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the district by which employed; and
2. Whose primary duty is performing administrative functions directly related to academic instruction or training in a district or department or subdivision thereof.

"Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

Employees engaged in academic administrative functions include:

1. The superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program;
2. The principal and any vice principals responsible for the operation of an elementary or secondary school;
3. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and
4. Other employees with similar responsibilities.

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Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunchroom managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

*29 C.F.R. 541.204*

*Salary Basis*

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis, unless the employee is a teacher. Subject to the exceptions listed in the rule, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. A district that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the district did not intend to pay exempt employees on a salary basis. *29 C.F.R. 541.600, .602(a), .603*

*Partial-Day  
Deductions*

A district employee who otherwise meets the salary basis requirements shall not be disqualified from exemption on the basis that the employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because:

1. Permission for its use has not been sought or has been sought and denied;
2. Accrued leave has been exhausted; or
3. The employee chooses to use leave without pay.

Deductions from the pay of a district employee for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

*29 C.F.R. 541.710*

*Safe Harbor  
Policy*

If a district has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the district will not lose

the exemption unless the district willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

The best evidence of a clearly communicated policy is a written policy that was distributed to employees before the improper pay deductions by, for example, providing a copy of the policy to employees upon hire, publishing the policy in an employee handbook, or publishing the policy on a district's intranet.

*29 C.F.R. 541.603(d)*

*Teachers*

The term "employee employed in a bona fide professional capacity" includes any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an elementary or secondary school system by which the employee is employed. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include:

1. Regular academic teachers;
2. Teachers of kindergarten or nursery school pupils;
3. Teachers of gifted or disabled children;
4. Teachers of skilled and semi-skilled trades and occupations;
5. Teachers engaged in automobile driving instruction;
6. Home economics teachers; and
7. Vocal or instrumental music instructors.

Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher who is not certified may be considered for

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exemption, provided that such individual is employed as a teacher by the employing school or school system.

*29 C.F.R. 541.303*

Wage and Hour  
Records

A district shall maintain and preserve payroll or other records for nonexempt employees containing the information required by the regulations under the FLSA. *29 C.F.R. 516.2(a)*

**Payday Law  
Exemption**

The Texas Payday Law does not apply to the state or a political subdivision. *Labor Code 61.003*

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**Classification of Positions**

The Superintendent or designee shall determine the classification of positions or employees as "exempt" or "nonexempt" for purposes of payment of overtime in compliance with the Fair Labor Standards Act (FLSA).

**Exempt**

The District shall pay employees who are exempt from the overtime pay requirements of the FLSA on a salary basis. The salaries of these employees are intended to cover all hours worked, and the District shall not make deductions that are prohibited under the FLSA.

An employee who believes deductions have been made from his or her salary in violation of this policy should bring the matter to the District's attention, through the District's complaint policy. [See DGBA] If improper deductions are confirmed, the District will reimburse the employee and take steps to ensure future compliance with the FLSA.

**Nonexempt**

Nonexempt employees may be compensated on an hourly basis or on a salary basis. Employees who are paid on an hourly basis shall be compensated for all hours worked. Employees who are paid on a salary basis are paid for either a 40-hour workweek or a 37.5-hour workweek and shall not earn additional pay unless the employees work more than 40 hours. Employees who work 37.5 hours shall receive hour-for-hour compensatory time for extra hours worked up to 40 hours per week.

A nonexempt employee shall have the approval of his or her supervisor before working overtime. An employee who works overtime without prior approval is subject to discipline but shall be compensated in accordance with the FLSA.

**Workweek Defined**

For purposes of FLSA compliance, the workweek for District employees shall begin at 12:00 a.m. Sunday and end at 11:59 p.m. Saturday.

**Compensatory Time**

At the District's option, nonexempt employees may receive compensatory time off, rather than overtime pay, for overtime work. The employee shall be informed in advance if overtime hours will accrue compensatory time rather than pay.

***Accrual***

Compensatory time earned by nonexempt employees may not accrue beyond a maximum of 20 hours. If an employee has a balance of more than 20 hours of compensatory time, the District shall require the employee to use the compensatory time, or at the District's option, the District shall pay the employee for the compensatory time.

***Use***

An employee shall use compensatory time within the duty year in which it is earned. If an employee has any unused compensatory

time remaining at the end of a duty year, the District shall pay the employee for the compensatory time.

Compensatory time may be used at either the employee's or the District's option. An employee may use compensatory time in accordance with the District's leave policies and if such use does not unduly disrupt the operations of the District. [See DEC(LOCAL)] The District may require an employee to use compensatory time when in the best interest of the District.

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**Note:** This policy addresses leaves in general. For provisions regarding the Family and Medical Leave Act (FMLA), including FML for an employee seeking leave because of a relative's military service, see DECA. For provisions addressing leave for an employee's military service, see DECB.

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**State Leave**

State Personal  
Leave

A district shall provide employees with five days per year of state personal leave, with no limit on accumulation and no restrictions on transfer among districts. A district may provide additional personal leave beyond this minimum.

A board may adopt a policy governing an employee's use of state personal leave, except that the policy may not restrict the purposes for which the leave may be used.

*Education Code 22.003(a)*

State Sick Leave  
(Accumulated Prior  
to 1995)

District employees retain any sick leave accumulated as state minimum sick leave under former Section 13.904(a) of the Education Code. Accumulated state sick leave shall be used only for the following:

1. Illness of the employee.
2. Illness of a member of the employee's immediate family.
3. Family emergency.
4. Death in the employee's immediate family.
5. During military leave [see Use During Military Leave, below].

*Acts of the 74th Legislative Session, Senate Bill 1, Sec. 66*

Former Education  
Service Center  
Employees

A district shall accept the sick leave accrued by an employee who was formerly employed by a regional education service center (ESC), not to exceed five days per year for each year of employment. Education Code 8.007

Order of Use

A board's policy governing an employee's use of state personal leave may not restrict the order in which an employee may use state personal leave and any additional personal leave provided by the school district.

An employee who retains any state sick leave is entitled to use the state sick leave, state personal leave, or local personal leave in any order to the extent that the leave the employee uses is appropriate to the purpose of the leave.

*Education Code 22.003(a), (f)*

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Use During Military  
Leave

An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. "Personal leave" includes personal or sick leave available under former law or provided by local policy. *Education Code 22.003(d), (e)* [See DECB]

**Temporary Disability**

Each full-time educator shall be given a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties. The contract or employment of the educator may not be terminated while the educator is on a leave of absence for temporary disability. For purposes of temporary disability leave, pregnancy is considered a temporary disability.

At Employee's  
Request

A request for a leave of absence for temporary disability must be made to a superintendent. The request must:

1. Be accompanied by a physician's statement confirming inability to work;
2. State the date requested by the educator for the leave to begin; and
3. State the probable date of return as certified by the physician.

By Board Authority

A board may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the board's judgment in consultation with a physician who has performed a thorough medical examination of the educator, the educator's condition interferes with the performance of regular duties. The educator shall have the right to present to the board testimony or other information relevant to the educator's fitness to continue in the performance of regular duties. [See DBB]

Return to Active  
Duty

The educator shall notify the superintendent of a desire to return to active duty no later than the 30th day before the expected date of return. The notice must be accompanied by a physician's statement indicating the educator's physical fitness for the resumption of regular duties.

*Notice*

*Placement*

An educator returning to active duty after a leave of absence for temporary disability is entitled to an assignment at the school where the educator formerly taught, subject to the availability of an appropriate teaching position. In any event, the educator shall be placed on active duty no later than the beginning of the next school year. A principal at another campus voluntarily may approve the appointment of an employee who wishes to return from leave of absence. However, if no other principal approves the assignment by the beginning of the next school year, a district must place the

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	employee at the school at which the employee formerly taught or was assigned.
Length of Absence	<p>A superintendent shall grant the length of leave of absence for temporary disability as required by the individual educator. A board may establish a maximum length for a leave of absence for temporary disability, but the maximum length may not be less than 180 calendar days.</p> <p><i>Education Code 21.409; Atty. Gen. Op. DM-177 (1992); Atty. Gen. Op. H-352 (1974)</i></p>
<b>Sick Leave Different from Temporary Disability Leave</b>	<p>An employee's entitlement to sick leave is unaffected by any concurrent eligibility for a leave of absence for temporary disability. The two types of leave are different, and each must be granted by its own terms. <i>Atty. Gen. Op. H-352 (1974)</i></p>
<b>Assault Leave</b>	<p>In addition to all other days of leave, a district employee who is physically assaulted during the performance of regular duties is entitled to the number of days of leave necessary to recuperate from physical injuries sustained as a result of the assault. The leave shall be paid as set forth below at Coordination with Workers' Compensation Benefits.</p> <p>A district employee is physically assaulted if the person engaging in the conduct causing injury to the employee:</p> <ol style="list-style-type: none"><li>1. Could be prosecuted for assault; or</li><li>2. Could not be prosecuted for assault only because the person's age or mental capacity makes the person a nonresponsible person for purposes of criminal liability.</li></ol>
Notice of Rights	<p>Any informational handbook a district provides to employees in an electronic or paper form or makes available by posting on the district's website must include notification of an employee's rights regarding assault leave, in the relevant section of the handbook. Any form used by a district through which an employee may request personal leave must include assault leave as an option.</p>
Assignment to Assault Leave	<p>At the request of an employee, a district must immediately assign the employee to assault leave. Days of assault leave may not be deducted from accrued personal leave. Assault leave may not extend more than two years beyond the date of the assault. Following an investigation of the claim, a district may change the assault leave status and charge the leave against the employee's accrued personal leave or against the employee's pay if insufficient accrued personal leave is available.</p>

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Coordination with  
Workers'  
Compensation  
Benefits

Notwithstanding any other law, assault leave benefits due to an employee shall be coordinated with temporary income benefits due from workers' compensation so the employee's total compensation from temporary income benefits and assault leave benefits will equal 100 percent of the employee's weekly rate of pay.

*Education Code 22.003(b)–(c-1)*

**Religious  
Observances**

A district shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of district business. Such absence shall be without pay unless applicable paid leave is available. *42 U.S.C. 2000e(j), 2000e-2(a); Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, (1986); Pinsker v. Joint Dist. No. 28J of Adams and Arapahoe Counties, 735 F.2d 388 (10th Cir. 1984)*

**Compliance with a  
Subpoena**

A district may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. *Labor Code 52.051(a)*

**Jury Duty**

A district may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against an employee because of the employee's compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, a district shall pay the employee the employee's normal daily compensation. An employee's accumulated personal leave may not be reduced because of the employee's service in compliance with a summons to appear as a juror. *Education Code 22.006*

**Attendance at  
Truancy Hearing**

A district may not terminate the employment of a permanent employee because the employee is required under Family Code 65.062(b) to attend a truancy court hearing. *Family Code 65.063*

**Developmental  
Leaves of Absence**

A board may grant a developmental leave of absence for study, research, travel, or other suitable purpose to an employee working in a position requiring a permanent teaching certificate who has served in a district at least five consecutive school years.

A developmental leave of absence may be granted for one school year at one-half salary or for one-half of a school year at full salary paid to the employee in the same manner, on the same schedule, and with the same deductions as if the employee were on full-time duty.

An employee on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be an employee of a district for purposes of participating in programs,

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holding memberships, and receiving benefits afforded by employment in a district.

*Education Code 21.452*

**Leave for Sick Foster Child**

An employer commits an unlawful employment practice under Labor Code, Chapter 21 if:

1. The employer administers a leave policy under which an employee is entitled to personal leave to care for or otherwise assist the employee's sick child; and
2. The leave policy does not treat in the same manner as an employee's biological or adopted minor child any foster child of the employee who:
  - a. Resides in the same household as the employee; and
  - b. Is under the conservatorship of the Texas Department of Family and Protective Services.

*Labor Code 21.0595*

**Absence Control**

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, a district that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced. *Howell v. Standard Motor Prods., Inc.*, 2001 U.S. Dist LEXIS 12332 (N. D. Tex. 2001) (Family and Medical Leave Act case); *Specialty Retailers v. DeMoranville*, 933 S.W.2d 490 (Tex. 1996) (age discrimination case); *Gonzalez v. El Paso Natural Gas Co.*, 40 F.E.P. Cases (BNA) 353 (Tex. App.—El Paso 1986, no pet.) (sex discrimination case)

[Some employees may have protected status even after the expiration of all other leave. See DAA.]

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**Definitions**

The term "immediate family" is defined as:

Family

1. Spouse.
2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands in loco parentis.
3. Parent, stepparent, parent-in-law, or other individual who stands in loco parentis to the employee.
4. Sibling, stepsibling, and sibling-in-law.
5. Grandparent and grandchild.
6. Any person residing in the employee's household at the time of illness or death.

For purposes of the Family and Medical Leave Act (FMLA), the definitions of spouse, parent, son or daughter, and next of kin are found in DECA(LEGAL).

Family Emergency

The term "family emergency" shall be limited to disasters and life-threatening situations involving the employee or a member of the employee's immediate family.

Leave Day

A "leave day" for purposes of earning, use, or recording of leave shall mean the number of hours per day equivalent to the employee's usual assignment, whether full time or part time.

Catastrophic Illness  
or Injury

A catastrophic illness or injury is a severe condition or combination of conditions affecting the mental or physical health of the employee or a member of the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and causes the employee to lose compensation from the District. Such conditions typically require prolonged hospitalization or recovery time or are expected to result in disability or death. Complications resulting from pregnancy shall be treated the same as any other condition.

**Availability**

The District shall make state personal leave and local leave for the current year available for use at the beginning of the school year.

**Earning Local Leave**

An employee shall not earn any local leave when he or she is in unpaid status. An employee using full or proportionate paid leave shall be considered to be in paid status.

**Deductions**

Leave without Pay

The District shall not approve paid leave for more leave days than have been accumulated in prior years plus leave currently available. Any unapproved absences or absences beyond accumulated

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and available paid leave shall result in deductions from the employee's pay.

**Leave Proration**

*Employed for  
Less Than Full  
Year*

If an employee separates from employment with the District before his or her last duty day of the year, or begins employment after the first duty day, state personal leave and local leave shall be prorated based on the actual time employed.

If an employee separates from employment before the last duty day of the school year, the employee's final paycheck shall be reduced for:

1. State personal leave the employee used beyond his or her pro rata entitlement for the school year; and
2. Local leave the employee used but had not earned as of the date of separation.

**Recording**

Leave shall be recorded as follows:

1. Leave shall be recorded in full or half-day increments for all employees.
2. If the employee is taking intermittent FMLA leave, leave shall be recorded in one-hour increments.

**Order of Use**

The District may require that earned compensatory leave and non-duty extended leave be used before any available paid state and local leave. Nonduty extended leave is earned time-off for 12-month employees who have not used said leave within the calendar year it is earned. [See DEAB]

Other than compensatory leave and non-duty extended leave, available leave shall be used in the order determined by each employee.

**Concurrent Use of  
Leave**

When an absent employee is eligible for FMLA leave, the District shall designate the absence as FMLA leave.

The District shall require the employee to use temporary disability leave and paid leave, including compensatory time, concurrently with FMLA leave.

An employee receiving workers' compensation income benefits may be eligible for paid or unpaid leave. An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

**Medical Certification**

An employee shall submit medical certification of the need for leave if:

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1. The employee is absent more than five consecutive workdays because of personal illness or illness in the immediate family;
2. The District requires medical certification due to a questionable pattern of absences or when deemed necessary by the supervisor or Superintendent or designee;
3. The employee requests FMLA leave for the employee's serious health condition or that of a spouse, parent, or child; or
4. The employee requests FMLA leave for military caregiver purposes.

In each case, medical certification shall be made by a health-care provider as defined by the FMLA. [See DECA(LEGAL)]

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**Note:** For District contribution to employee insurance during leave, see CRD(LOCAL).

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**State Personal Leave**

The Board requires employees to differentiate the manner in which state personal leave is used:

Non-Discretionary  
Use

1. Non-discretionary use of leave shall be for the same reasons and in the same manner as state sick leave accumulated before May 30, 1995. [See DEC(LEGAL)]

Discretionary Use

2. Discretionary use of leave is at the individual employee's discretion, subject to limitations set out below.

*Limitations*

Request for  
Leave

The employee shall submit a written request for discretionary use of state personal leave to the immediate supervisor or designee in advance in accordance with administrative regulations. In deciding whether to approve or deny state personal leave, the supervisor or designee shall not seek or consider the reasons for which an employee requests to use leave. The supervisor or designee shall, however, consider the effect of the employee's absence on the educational program, scheduled staff development, or District operations, as well as the availability of substitutes.

Duration of  
Leave

Discretionary use of state personal leave shall not exceed five consecutive workdays, and no more than ten leave days may be used per school year. Requests for exceptions to these limitations shall be made directly to the Superintendent. In deciding whether to approve or deny state personal leave, the Superintendent shall not seek or consider the reasons for which an employee requests to use leave. The Superintendent shall, however, consider the effect of the employee's absence on the educational program, scheduled staff develop-

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ment, or District operations, as well as the availability of substitutes.

**Local Leave**

All full-time employees shall earn five, six, or seven paid local leave days per school year for positions normally requiring ten, 11, or 12 months of service per year, respectively.

Each part-time employee shall earn local leave on the basis of the length of the employee's workday as follows:

1. In a position normally requiring three hours of service per day, an employee shall earn five three-hour days per year for a total of 15 hours of local leave.
2. In a position normally requiring four hours of service per day, an employee shall earn five four-hour days per year for a total of 20 hours of local leave.

Local leave shall accumulate without limit.

Local leave shall be used according to the terms and conditions of state personal leave. [See State Personal Leave, above.]

**Special Leave of Absence**

A leave of absence for a period of one teaching year beginning with the fall semester shall be available to each contract and/or exempt employee with at least four consecutive years of service in the District, subject to the following conditions:

1. This leave shall apply to use for higher education, child care, research, or field research.
2. The District shall not be responsible for compensation for salary or insurance coverage during a leave of absence. [See CRD(LOCAL)]
3. A leave of absence shall be subject to the approval of the Superintendent and the Board.
4. Upon completion of a leave of absence, the employee shall be guaranteed employment within the system with no loss of credit for service.
5. The individual taking a leave of absence shall not lose any leave accumulated.
6. An employee shall not be eligible for this leave immediately following a special child care leave.

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**Special Child Care Leave**

Child care leave for a period of one teaching year shall be available to each contract and/or exempt employee who has been employed with the District for a period of no less than two consecutive years, subject to the following conditions:

1. Child care leave shall be subject to the approval of the Superintendent and the Board.
2. The District shall not be responsible for compensation for salary or insurance coverage during child care leave. [See CRD(LOCAL)]
3. Upon application for an existing vacancy, the District shall give preference in employment to an employee who has taken a child care leave. The District shall not guarantee employment to a person who takes child care leave.
4. An employee who takes child care leave shall not lose accumulated leave under the regular leave policy.
5. An employee shall not be eligible for this leave immediately following a special leave of absence.

**Sick Leave Pool**

A full-time employee who has exhausted all paid leave, who has been absent four workdays without pay, and who suffers from a catastrophic illness or injury or is absent due to the catastrophic illness or injury of a member of the employee's immediate family may request the establishment of a sick leave pool, to which District employees may donate only local leave for use by the eligible employee.

Days shall be donated from one employee, hereinafter termed the "donor," to another employee, termed the "recipient," by following the stated procedures below.

**Limitations**

A paraprofessional employee may only donate to another paraprofessional employee.

A normal pregnancy shall not be included in the sick leave program. However, should there be a complication concerning the mother or baby before, during, or after delivery, the sick leave donor program would then apply for the duration of the complication.

The maximum number of days an employee may donate shall be five local leave days per school year but not more than one day per pay period per recipient.

The maximum number of days received from the program by one recipient may not exceed 45 days during the school year.

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	<p>The school year shall be defined as August 1 through July 31 of the following year.</p>
Procedures for Request	<p>A written request for the donation of sick leave days shall be made by the recipient. In case the incapacity is of such a nature that the recipient cannot personally apply, the request may be submitted by an authorized agent or a family member. If there is no authorized agent, a principal or supervisor may act on behalf of the recipient.</p> <p>Requests may not be made for an employee who is on long-term disability insurance through the District. In no case shall the recipient receive a daily rate that exceeds his or her current daily salary.</p> <p>In the event of the death of the recipient, donated days shall not be transferred to the estate of the deceased.</p> <p>The request form shall be submitted to the human resources department, which will take the request to a District administrative committee (DAC), which will review the requirements for distribution to the sick leave pool. Upon review, if the request meets the definition of catastrophic illness or injury, the District review committee shall release the request to campus DAC representatives for distribution on campus.</p> <p>This plan is a donor program based on goodwill. Neither the DAC representative, the donors, nor the District shall be responsible for fulfilling any or all days requested.</p>
Procedures for Donations	<p>Donor forms may be obtained from the campus DAC representative on the donor's campus or from human resources. The form must be returned to that representative or human resources.</p> <p>The confidentiality of the donor shall be protected by the various staff members involved in processing the forms.</p>
Appeal	<p>All decisions regarding the establishment or implementation of the District's sick leave pool may be appealed in accordance with DGBA(LOCAL), beginning with the Superintendent or designee.</p>
<b>Bereavement (Funeral) Leave</b>	<p>In the event of a death in an employee's immediate family, the District shall grant the employee as many as five days of local bereavement leave prior to the use of any sick days or personal days. One day of bereavement leave must be used the day of the funeral or adjacent to the day of the funeral. The campus principal shall provide approval for such leave.</p>
<b>Family and Medical Leave</b> Twelve-Month Period	<p>For purposes of an employee's entitlement to FMLA leave, the 12-month period shall be measured forward from the date an individual employee's first FMLA leave begins.</p>

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Combined Leave for Spouses	If both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. The District shall limit military caregiver leave to a combined total of 26 weeks. [See DECA(LEGAL)]
Intermittent or Reduced Schedule Leave	The District may permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee. [See DECA(LEGAL) for use of intermittent or reduced schedule leave due to a medical necessity.]
Certification of Leave	If an employee requests leave, the employee shall provide certification, as required by FMLA regulations, of the need for leave. [See DECA(LEGAL)]
Fitness-for-Duty Certification	If an employee takes FMLA leave due to the employee's own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification. If the District will require certification of the employee's ability to perform essential job functions, the District shall provide a list of essential job functions to the employee with the FMLA designation notice.
End of Semester Leave	If a teacher takes leave near the end of the semester, the District may require the teacher to continue leave until the end of the semester. [See DECA(LEGAL), Leave at the End of a Semester]
Failure to Return	If, at the expiration of FMLA leave, the employee is able to return to work but chooses not to do so, the District may require reimbursement of premiums paid by the District during the leave. [See DECA(LEGAL), Recovery of Benefit Cost]
<b>Temporary Disability Leave</b>	<p>Any full-time employee whose position requires educator certification by the State Board for Educator Certification or by the District shall be eligible for temporary disability leave. All other employees shall be eligible for unpaid temporary disability leave after the completion of the probationary period, as defined in the employee handbook. The maximum length of temporary disability leave shall be 180 calendar days. [See DBB(LOCAL) for temporary disability leave placement and DEC(LEGAL) for return to active duty.]</p> <p>Medical certification that meets the requirements of the FMLA shall be required from an employee requesting temporary disability leave. For absences of more than 30 days, recertification may be required in accordance with the FMLA. [See DEC(LEGAL)]</p>
<b>Workers' Compensation</b>	<p><b>Note:</b> Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation</p>

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of the District's contribution to health insurance. [See CRD(LOCAL) regarding payment of insurance contribution during employee absences.]

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An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

An employee eligible for workers' compensation income benefits, and not on assault leave, may elect in writing to use paid leave.

**Court Appearances**

Absences for court appearances related to an employee's personal business shall be deducted from the employee's personal leave or, at the option of the employee, shall be taken by the employee as leave without pay.

**Former  
Reimbursement at  
Retirement Plan**

The Board rescinded the reimbursement at retirement plan effective at the end of the 2005–06 school year. Eligibility was determined for individual employees during the 2005–06 school year, and the former reimbursement at retirement plan shall not apply to any other employees. The eligible employees who meet the retirement requirements established by the former plan shall be allowed to retire at any time under the conditions of the former plan. A retiring employee's benefits shall be calculated using the 2005–06 base salary and local sick leave earned through August 31, 2006.

**Reimbursement for  
Unused Local Leave**

The District shall establish a reimbursement program fund limited to 1.0 percent of the total District budgeted salaries for the current year. If a balance remains from any year, the amount shall be added to the percent allocated the next year, not to exceed a total of \$100,000 plus the 1.0 percent salary factor.

An employee who takes full service retirement with the Texas Teacher Retirement System (TRS) with a combination of age and service years equal to 80 or more shall be compensated for accumulated local sick leave accrued while employed by the District at 50 percent of the rate of his or her daily wage at the time of retirement. A retiring employee may be compensated for no more than the number of workdays for one contract year or for the number of duty days specified for the position, whichever is appropriate.

An employee who takes reduced service retirement with TRS shall be compensated for up to 100 days of local sick leave accrued while employed by the District at the rate of the daily wage of a substitute in effect at the time of retirement.

An employee who requests participation but is denied due to percent allocation shall be guaranteed payment of benefits the next

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school year. Available funds shall be disbursed based on seniority of total years of experience as recognized by TRS.

The Superintendent or designee shall provide administrative procedures for employees who exercise this reimbursement plan. This policy became effective beginning with employees retiring under TRS-80 in the 2006–07 school year. This policy shall be reviewed annually with a report given to the Board during the budget presentation.

Once an employee has chosen to exercise his or her rights under this plan, the decision of the employee shall be irrevocable. An employee may exercise his or her rights under this plan only once. After exercising his or her rights, an employee may continue to serve the District as an employee only with the express approval of the Board.

Local leave days for which the employee receives compensation shall be deducted from the employee's accrued total. The compensation of local leave days at retirement has been instigated as an attendance incentive for employees.

**Neutral Absence  
Control**

The District shall pursue termination when an employee is no longer on an approved leave and has not returned to work. An at-will employee shall be automatically terminated. For professional contract employees, failure to return from leave may constitute good cause for termination.

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**Note:** This policy summarizes the Family and Medical Leave Act (FMLA) and implementing regulations, including FML for an employee seeking leave because of a relative's military service. For provisions on leaves in general, see DEC. For provisions addressing leave for an employee's military service, see DECB.

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LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

**General Provisions**

Covered Employer

All public elementary and secondary schools are “covered employers” under the FMLA, without regard to the number of employees employed. The term “employer” includes any person who acts directly or indirectly in the interest of a district to any of the district's employees. *29 U.S.C. 2611(4), 2618(a); 29 C.F.R. 825.104(a)*

Eligible Employee

“Eligible employee” means an employee who:

1. Has been employed by a district for at least 12 months. The 12 months need not be consecutive;
2. Has been employed by a district for at least 1,250 hours of service during the 12-months immediately preceding the commencement of leave; and
3. Is employed at a worksite where 50 or more employees are employed by the district within 75 miles of that worksite.

*29 U.S.C. 2611(2); 29 C.F.R. 825.110*

[A district that has no eligible employees must comply with the requirements at General Notice, below.]

Qualifying Reasons  
for Leave

A district shall grant leave to eligible employees:

1. For the birth of a son or daughter, and to care for the newborn child;
2. For placement with the employee of a son or daughter for adoption or foster care [For the definitions of “adoption” and “foster care,” see 29 C.F.R. 825.122.];
3. To care for the employee's spouse, son or daughter, or parent with a serious health condition;
4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job [For the definition of “serious health condition,” see 29 C.F.R. 825.113.];
5. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty) [For the definition of “military member,” see 29 C.F.R. 825.126(b). For the definition of “covered active duty” and “call to covered active duty status,” see 29 C.F.R. 825.102.]; and
6. To care for a covered service member with a serious injury or illness incurred in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the service

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member. [For the definitions of “covered service member” and “serious injury or illness,” see 29 C.F.R. 825.102, .122.]

*29 U.S.C. 2612(a); 29 C.F.R. 825.112*

For provisions regarding treatment for substance abuse, see 29 C.F.R. 825.119.

*Qualifying  
Exigency*

An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

1. Short-notice deployment.
2. Military events and related activities.
3. Childcare and school activities.
4. Financial and legal arrangements.
5. Counseling.
6. Rest and recuperation.
7. Post-deployment activities.
8. Parental care.
9. Additional activities, provided that the district and employee agree that the leave shall qualify as an exigency and agree to both the timing and duration.

*29 C.F.R. 825.126*

*Pregnancy or  
Birth*

Both parents are entitled to FMLA leave to be with a healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. In addition, the expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health-care provider during the absence and even if the absence does not last for more than three consecutive calendar days. A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated, during her prenatal care, or following the birth of a child if the spouse has a serious health condition. [For the definition of “needed to care for,” see 29 C.F.R. 825.124.] *29 C.F.R. 825.120*

Definitions  
*“Equivalent  
Position”*

An “equivalent position” is one that is virtually identical to the employee’s former position in terms of pay, benefits, and working conditions, including privileges, perquisites, and status. It must involve the same or substantially similar duties and responsibilities, which

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must entail substantially equivalent skill, effort, responsibility, and authority. 29 C.F.R. 825.215(a)

*"Next of Kin"*

"Next of kin of a covered service member" (for purposes of military caregiver leave) means:

1. The blood relative specifically designated in writing by the covered service member as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. The designated individual shall be deemed to be the covered service member's only next of kin; or
2. When no such designation has been made, the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority:
  - a. Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions,
  - b. Brothers and sisters,
  - c. Grandparents,
  - d. Aunts and uncles, and
  - e. First cousins.

If there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously.

29 C.F.R. 825.127(d)(3)

*"Parent"*

"Parent" (for purposes of family, medical, and qualifying exigency leave) means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents "in law." 29 C.F.R. 825.122

For the definition of "parent of a covered service member" for purposes of military caregiver leave, see 29 C.F.R. 825.127(d)(2).

*"Son or Daughter"*

"Son or daughter" (for purposes of family and medical leave) means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence. 29 C.F.R. 825.122

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For the definition of “son or daughter on active duty or call to active duty status” for purposes of qualifying exigency leave, see 29 C.F.R. 825.122.

For the definition of “son or daughter of a covered service member” for purposes of military caregiver leave, see 29 C.F.R. 825.127(d)(1).

*“Spouse”*

“Spouse” means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state.

This definition includes an individual in a same-sex or common law marriage that either:

1. Was entered into in a state that recognizes such marriages; or
2. If entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

*29 C.F.R. 825.102, .122*

**Leave Entitlement  
and Use**

*Amount of Leave*

Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during a 12-month period for any one or more of the qualifying reasons.

Spouses who are employed by the same district may be limited to a combined total of 12 weeks of FMLA leave during any 12-month period if leave is taken for the birth of a son or daughter, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.

*29 U.S.C. 2612(a), (f); 29 C.F.R. 825.120(a)(3), .200, .201*

*Determining the  
12-Month Period*

Except with respect to military caregiver leave, a district may choose any one of the following methods for determining the “12-month period” in which the 12 weeks of leave entitlement occurs:

1. The calendar year;
2. Any fixed 12-month “leave year,” such as a fiscal year or a year starting on an employee's “anniversary” date;
3. The 12-month period measured forward from the date any employee's first FMLA leave begins; or

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4. A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

*29 C.F.R. 825.200(b)*

*Military Caregiver  
Leave*

In the case of military caregiver leave, an eligible employee’s FMLA leave entitlement is limited to a total of 26 workweeks of leave during a “single 12-month period.” The “single 12-month period” is measured forward from the date an employee’s first FMLA leave to care for the covered service member begins, regardless of the method used by a district to determine the 12-month period for other FMLA leaves. During the “single 12-month period,” an eligible employee’s FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. *29 C.F.R. 825.200(f), (g)*

Spouses who are employed by the same district may be limited to a combined total of 26 weeks of FMLA leave during the “single 12-month period” if leave is taken as military caregiver leave, for the birth of a son or daughter, for the placement of a child for adoption or foster care, or to care for a parent with a serious health condition. *29 C.F.R. 825.127(e)(3)*

*Summer  
Vacation and  
Other Extended  
Breaks*

If a district’s activity temporarily ceases and employees generally are not expected to report for work for one or more weeks (e.g., a school closing for two weeks for the Christmas/New Year holiday), those days do not count against the employee’s FMLA leave entitlement. Similarly, the period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee’s FMLA leave entitlement. *29 C.F.R. 825.200(h), .601(a)*

*Intermittent or  
Reduced Leave  
Schedule*

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. “Intermittent leave” is FMLA leave taken in separate blocks of time due to a single qualifying reason. A “reduced leave schedule” is a leave schedule that reduces an employee’s usual number of working hours per workweek, or hours per workday.

For leave taken because of the employee’s own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or military caregiver leave, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. Leave due to a qualifying exigency may also be taken on an intermittent or reduced schedule basis.

When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may

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take leave intermittently or on a reduced leave schedule only if the district agrees.

*29 U.S.C. 2612(b); 29 C.F.R. 825.102, .202*

*Transfer to  
Alternative  
Position*

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, a district may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. *29 U.S.C. 2612(b)(2); 29 C.F.R. 825.204*

*Calculating  
Leave Use*

When an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. A district must account for intermittent or reduced schedule leave using an increment no greater than the shortest period of time that the district uses to account for use of other forms of leave, provided the increment is not greater than one hour. *29 C.F.R. 825.205*

Special Rules for  
Instructional  
Employees

Special rules apply to certain employees of school districts. These special rules affect leave taken intermittently or on a reduced schedule, or taken near the end of an academic term (semester) by instructional employees.

"Instructional employees" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

*29 C.F.R. 825.600*

*Failure to Provide  
Notice of  
Foreseeable  
Leave*

If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or on a reduced schedule, a district may require the employee to take leave of a particular duration or to transfer temporarily to an alternative position. Alternatively, a district may require the employee to delay the taking of leave until the notice provision is met. *29 C.F.R. 825.601(b)*

*20 Percent Rule*

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered service member, or for the employee's own serious health condition; the leave is foreseeable based on planned medical treatment; and the employee would be on leave for more than 20 percent of the total

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number of working days over the period the leave would extend, a district may require the employee to choose:

1. To take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
2. To transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

"Periods of a particular duration" means a block or blocks of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave. If an employee chooses to take leave for "periods of a particular duration" in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

*29 U.S.C. 2618(c); 29 C.F.R. 825.601, .603*

Leave at the End of  
a Semester

As a rule, a district may not require an employee to take more FMLA leave than the employee needs. The FMLA recognizes exceptions where instructional employees begin leave near the end of a semester. As set forth below, the district may in certain cases require the employee to take leave until the end of the semester.

The school semester, or "academic term," typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of the FMLA.

If a district requires the employee to take leave until the end of the semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. Any additional leave required by the district to the end of the semester is not counted as FMLA leave; however, the district shall maintain the employee's group health insurance and restore the employee to the same or equivalent job, including other benefits, at the end of the leave.

*29 U.S.C. 2618(d); 29 C.F.R. 825.603*

*More Than Five  
Weeks Before  
End of Semester*

A district may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave more than five weeks before the end of the semester;
2. The leave will last at least three weeks; and

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3. The employee would return to work during the three-week period before the end of the semester.

*During Last Five  
Weeks of  
Semester*

A district may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave during the last five weeks of the semester for any reason other than the employee's own serious health condition or a qualifying exigency;
2. The leave will last more than two weeks; and
3. The employee would return to work during the two-week period before the end of the semester.

*During Last  
Three Weeks of  
Semester*

A district may require an instructional employee to continue taking leave until the end of the semester if the employee begins leave during the three-week period before the end of the semester for any reason other than the employee's own serious health condition or a qualifying exigency.

*29 C.F.R. 825.602*

Substitution of Paid  
Leave

Generally, FMLA leave is unpaid leave. However, an employee may choose to substitute accrued paid leave for unpaid FMLA leave. If an employee does not choose to substitute accrued paid leave, a district may require the employee to do so. The term "substitute" means that the paid leave provided by the district, and accrued pursuant to established policies of the district, will run concurrently with the unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the district's normal leave policy. *29 U.S.C. 2612(d); 29 C.F.R. 825.207(a)*

*Compensatory  
Time*

If an employee requests and is permitted to use accrued compensatory time to receive pay during FMLA leave, or if a district requires such use, the compensatory time taken may be counted against the employee's FMLA leave entitlement. *29 C.F.R. 825.207(f)*

*FMLA and  
Workers'  
Compensation*

A serious health condition may result from injury to the employee "on or off" the job. If a district designates the leave as FMLA leave, the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, neither the employee nor the district may require the substitution of paid leave. However, a district and an employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.

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If the health-care provider treating the employee for the workers' compensation injury certifies that the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the district's offer of a "light duty job." As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the district may require the use of accrued paid leave.

*29 C.F.R. 825.207(e)*

Maintenance of  
Health Benefits

During any FMLA leave, a district must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

An employee may choose not to retain group health plan coverage during FMLA leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as before taking leave without any qualifying period, physical examination, exclusion of pre-existing conditions, and the like.

*29 U.S.C. 2614(c); 29 C.F.R. 825.209*

*Payment of  
Premiums*

During FMLA leave, the employee must continue to pay the employee's share of group health plan premiums. If premiums are raised or lowered, the employee would be required to pay the new premium rates. *29 C.F.R. 825.210*

*Failure to Pay  
Premiums*

Unless a district has an established policy providing a longer grace period, a district's obligations to maintain health insurance coverage cease if an employee's premium payment is more than 30 days late. In order to terminate the employee's coverage, the district must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. Coverage for the employee may be terminated at the end of the 30-day grace period, if the required 15-day notice has been provided.

Upon the employee's return from FMLA leave, the district must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. The employee may not be required to meet any qualification requirements imposed by the

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plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

*29 C.F.R. 825.212*

*Recovery of  
Benefit Cost*

If an employee fails to return to work after FMLA leave has been exhausted or expires, a district may recover from the employee its share of health plan premiums during the employee's unpaid FMLA leave, unless the employee's failure to return is due to one of the reasons set forth in the regulations. A district may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave. *29 C.F.R. 825.213*

*Right to  
Reinstatement*

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. *29 C.F.R. 825.214, .216(a)*

*Moonlighting  
During Leave*

If a district has a uniformly applied policy governing outside or supplemental employment, the policy may continue to apply to an employee while on FMLA leave. A district that does not have such a policy may not deny FMLA benefits on the basis of outside or supplemental employment unless the FMLA leave was fraudulently obtained. *29 U.S.C. 2618(e); 29 C.F.R. 825.216(e)*

*Reinstatement of  
School  
Employees*

A district shall make the determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave on the basis of established school board policies and practices. The "established policies" must be in writing, must be made known to the employee before the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to "an equivalent position" must provide substantially the same protections as provided in the FMLA. For example, an employee may not be restored to a position requiring additional licensure or certification. *29 C.F.R. 825.604*

*Pay Increases  
and Bonuses*

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with a district's policy or practice with respect to other employees on an

equivalent leave status for a reason that does not qualify as FMLA leave.

Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then an employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

*29 C.F.R. 825.215(c)*

*Key Employees*

A district may deny job restoration to a key employee if such denial is necessary to prevent substantial and grievous economic injury to the operations of the district. *29 U.S.C. 2614(b); 29 C.F.R. 825.217–.219*

**Notices and Medical  
Certification**

Employer Notices

*General Notice*

Every covered employer must post on its premises a notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints with the Department of Labor's Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Covered employers must post this general notice even if no employees are eligible for FMLA leave.

If a district has any eligible employees, it shall also:

1. Include the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist; or
2. Distribute a copy of the general notice to each new employee upon hiring.

Electronic posting is sufficient if it meets the other requirements of this section.

If a district's workforce is comprised of a significant portion of workers who are not literate in English, the district shall provide the general notice in a language in which the employees are literate.

A district may use Department of Labor (DOL) form WHD 1420 or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice.

*29 C.F.R. 825.300(a)*

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*Eligibility Notice*

When an employee requests FMLA leave, or when a district acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the district must notify the employee of the employee's eligibility to take FMLA leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.

A district must provide the eligibility notice within five business days, absent extenuating circumstances. Notification of eligibility may be oral or in writing. The district may use DOL form WH-381 to provide such notification to employees. The district shall translate the notice in any situation in which it is required to translate the general notice.

*29 C.F.R. 825.300(b)*

*Rights and  
Responsibilities  
Notice*

Each time a district provides an eligibility notice to an employee, the district shall also provide a written rights and responsibilities notice. The rights and responsibilities notice must include the information required by the FMLA regulations at 29 C.F.R. 825.300(c)(1).

A district may use DOL form WH-381 to provide such notification to employees. A district may adapt the prototype notice as appropriate to meet these notice requirements. The notice may be distributed electronically if it meets the other requirements of this section. The district shall translate the notice in any situation in which it is required to translate the general notice.

*29 C.F.R. 825.300(c)*

*Designation  
Notice*

When a district has enough information to determine whether leave is being taken for an FMLA-qualifying reason, the district must notify the employee whether the leave will be designated as FMLA leave. If the district determines that the leave will not be designated as FMLA-qualifying, the district must notify the employee of that determination. Absent extenuating circumstances, a district must provide the designation notice within five business days.

A district may use DOL form WH-382 to provide such notification to employees. If the leave is not designated as FMLA leave because it does not meet the requirements of the Act, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

The designation notice must include the information required by the FMLA regulations at 29 C.F.R. 825.300(d)(1) (substitution of paid leave), (d)(3) (fitness for duty certification), and (d)(6) (amount

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of leave charged against FMLA entitlement). For further provisions on designation of leave, see 29 C.F.R. 825.301.

*29 C.F.R. 825.300(d)*

*Retroactive  
Designation*

A district may retroactively designate leave as FMLA leave, with appropriate notice to the employee, if the district's failure to timely designate leave does not cause harm or injury to the employee. In addition, a district and an employee may agree that leave will be retroactively designated as FMLA leave. *29 C.F.R. 825.301(d)*

Employee Notice

An employee giving notice of the need for FMLA leave must state a qualifying reason for the leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave, below. The employee does not need to expressly assert rights under the Act or even mention the FMLA. *29 C.F.R. 825.301*

*Foreseeable  
Leave*

An employee must provide at least 30 days' advance notice before FMLA leave is to begin if the need for leave is foreseeable based upon an expected birth, placement for adoption or foster care, or planned medical treatment of the employee, a family member, or a covered service member. If 30 days' notice is not practicable, the employee must give notice as soon as practicable. For leave due to a qualifying exigency, the employee must provide notice as soon as practicable regardless of how far in advance the leave is foreseeable.

When planning medical treatment, the employee must consult with the district and make a reasonable effort to schedule the treatment so as not to disrupt unduly the district's operations, subject to the approval of the health-care provider.

*29 C.F.R. 825.302*

*Unforeseeable  
Leave*

When the approximate timing of leave is not foreseeable, an employee must provide notice to a district as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the district's usual and customary notice requirements applicable to such leave. *29 C.F.R. 825.303*

*Compliance with  
District  
Requirements*

A district may require an employee to comply with its usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied. *29 C.F.R. 825.302(d), .303(c)*

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Certification of Leave	<p>A district may require that an employee's FMLA leave be supported by certification, as described below. The district must give notice of a requirement for certification each time certification is required. At the time the district requests certification, the district must advise the employee of the consequences of failure to provide adequate certification. 29 C.F.R. 825.305(a)</p>
<i>Timing</i>	<p>In most cases, a district should request certification at the time the employee gives notice of the need for leave or within five business days thereafter or, in the case of unforeseen leave, within five business days after the leave commences. The district may request certification at a later date if the district later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the district within 15 calendar days after the district's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. 29 C.F.R. 825.305(b)</p>
<i>Incomplete or Insufficient Certification</i>	<p>A district shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. The district must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent, good faith efforts) to cure any such deficiency.</p> <p>A certification is "incomplete" if one or more of the applicable entries have not been completed. A certification is "insufficient" if it is complete, but the information provided is vague, ambiguous, or non-responsive. A certification that is not returned to the district is not considered incomplete or insufficient, but constitutes a failure to provide certification.</p> <p>29 C.F.R. 825.305(c)</p>
<i>Medical Certification of Serious Health Condition</i>	<p>When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, a district may require the employee to obtain medical certification from a health-care provider. A district may use DOL optional form WH-380-E when the employee needs leave due to the employee's own serious health condition and optional form WH-380-F when the employee needs leave to care for a family member with a serious health condition. A district may not require information beyond that specified in the FMLA regulations.</p> <p>An employee may choose to comply with the certification requirement by providing the district with an authorization, release, or waiver allowing the district to communicate directly with the health-care provider.</p>

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For the definition of "health-care provider," see 29 C.F.R. 825.125.

*29 C.F.R. 825.306*

Genetic  
Information

A district subject to the Genetic Information Nondiscrimination Act (GINA) shall comply with the GINA rules with respect to a request for medical information. 29 C.F.R. 1635.8(b)(1)(i)(A) [See DAB]

*Authentication  
and Clarification*

If an employee submits a complete and sufficient certification signed by the health-care provider, a district may not request additional information from the health-care provider. However, the district may contact the health-care provider for purposes of clarification and authentication of the certification after the district has given the employee an opportunity to cure any deficiencies, as set forth above. To make such contact, a district must use a health-care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances may the employee's direct supervisor contact the employee's health-care provider.

"Authentication" means providing the health-care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the health-care provider who signed the document; no additional medical information may be requested.

"Clarification" means contacting the health-care provider to understand the handwriting on the certification or to understand the meaning of a response. A district may not ask the health-care provider for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule must be satisfied when individually identifiable health information of an employee is shared with a district by a HIPAA-covered health-care provider.

*29 C.F.R. 825.307(a)*

*Second and Third  
Opinions*

If a district has reason to doubt the validity of a medical certification, the district may require the employee to obtain a second opinion at the district's expense. If the opinions of the employee's and the district's designated health-care providers differ, the district may require the employee to obtain certification from a third health-care provider, again at the district's expense. 29 C.F.R. 825.307(b), (c)

*Foreign Medical  
Certification*

If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the district shall accept medical certification as well as second and third opinions from a health-care provider who practices in that country. If the certification is in a language other

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than English, the employee must provide the district with a written translation of the certification upon request. 29 C.F.R. 825.307(f)

*Recertification*

A district may request recertification no more often than every 30 days and only in connection with an absence by the employee, except as set forth in the FMLA regulations. The district must allow at least 15 calendar days for the employee to provide recertification.

As part of the recertification for leave taken because of a serious health condition, the district may provide the health-care provider with a record of the employee's absence pattern and ask the health-care provider if the serious health condition and need for leave is consistent with such a pattern.

29 C.F.R. 825.308

*Certification—  
Qualifying  
Exigency Leave*

The first time an employee requests leave because of a qualifying exigency, a district may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the covered military member's covered active duty service.

A district may also require that the leave be supported by a certification that addresses the information at 29 C.F.R. 825.309(b). The district may use DOL optional form WH-384, or another form containing the same basic information, for this certification. The district may not require information beyond that specified in the regulations.

29 C.F.R. 825.309

*Certification—  
Military Caregiver  
Leave*

When an employee takes military caregiver leave, a district may require the employee to obtain a certification completed by an authorized health-care provider of the covered service member. In addition, the district may request that the employee and/or covered service member address in the certification the information at 29 C.F.R. 825.310(c). The district may also require the employee to provide confirmation of a covered family relationship to the seriously injured or ill service member.

A district may use DOL optional form WH-385, or another form containing the same basic information, for this certification. The district may not require information beyond that specified in the regulations. A district must accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill service member at his or her bedside.

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A district may seek authentication and/or clarification of the certification under the procedures described above. Second and third opinions, and recertifications, are not permitted for leave to care for a covered service member.

*29 C.F.R. 825.310*

*Intent to Return  
to Work*

A district may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The district's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation. *29 C.F.R. 825.311*

*Fitness for Duty  
Certification*

As a condition of restoring an employee who took FMLA leave due to the employee's own serious health condition, a district may have a uniformly applied policy or practice that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health-care provider that the employee is able to resume work. A district may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. *29 C.F.R. 825.312*

*Failure to Provide  
Certification*

If the employee fails to provide the district with a complete and sufficient certification, despite the opportunity to cure, or fails to provide any certification, the district may deny the taking of FMLA leave. This provision applies in any case where a district requests a certification, including any clarifications necessary to determine if certifications are authentic and sufficient. *29 C.F.R. 825.305*

For failure to provide timely certification of foreseeable leave, see *29 C.F.R. 825.313(a)*. For failure to provide timely certification of unforeseeable leave, see *29 C.F.R. 825.313(b)*. For failure to provide timely recertification, see *29 C.F.R. 825.313(c)*. For failure to provide timely fitness-for-duty certification, see *29 C.F.R. 825.313(d)*.

**Miscellaneous  
Provisions**

**Records**

A district shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act (FLSA) and the FMLA regulations. A district shall keep these records for no less than three years and make them available for inspection, copying, and transcription by representatives of the DOL upon request.

If the district is preserving records electronically, the district must comply with *29 C.F.R. 825.500(b)*. A district that has eligible employees must maintain records with the data set forth at *29 C.F.R. 825.500(c)*. A district that has no eligible employees must maintain

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just the data at 29 C.F.R. 825.500(c)(1). For districts in a joint employment situation, see 29 C.F.R. 825.500(e).

Records and documents relating to certifications, recertifications, or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files.

If the Genetic Information Nondiscrimination Act (GINA) is applicable, records and documents created for purposes of FMLA leave that contain family medical history or genetic information shall be maintained in accordance with the confidentiality requirements of GINA (see 29 C.F.R. 1635.9), which permit such information to be disclosed consistent with the requirements of the FMLA. [For information regarding GINA, see DAB(LEGAL).]

If the Americans with Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements [see 29 C.F.R. 1630.14(c)(1)], except as set forth in this section of the regulations.

*29 C.F.R. 825.500*

*Prohibition  
Against  
Discrimination  
and Retaliation*

The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. 29 U.S.C. 2615; 29 C.F.R. 825.220

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(LEGAL)

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**Note:** This policy addresses leave for an employee's military service. For provisions on leaves in general, see DEC. For provisions regarding the Family and Medical Leave Act (FMLA), including FML for an employee seeking leave because of a relative's military service, see DECA.

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**Federal Military  
Leave**

Reemployment

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services shall be entitled to certain reemployment rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) if:

1. The person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to a district (unless notice is precluded by military necessity or is otherwise unreasonable or impossible);
2. The cumulative length of the absence and of all previous absences from a position of employment with the district does not exceed five years; and
3. The person reports to or submits an application for reemployment to the district and complies with the appropriate procedural requirements that apply under the circumstances.

For purposes of federal military leave, "uniformed services" means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; and any other category of persons designated by the President in time of war or emergency.

A person who is reemployed under USERRA is entitled to the seniority, and other rights and benefits determined by seniority, that the person had on the date of the commencement of uniformed service, plus the additional seniority, rights, and benefits that such person would have attained if the person had remained continuously employed.

Exception

A district is not required to reemploy a person if:

1. The district's circumstances have so changed as to make reemployment impossible or unreasonable;
2. The reemployment of such person would impose an undue hardship on the district; or

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3. The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

*38 U.S.C. 4301, et. seq.*

**State Leave for  
Member of Military or  
Rescue Team**

Leave of Absence

An employee of a district who is a member of the state military forces, a reserve component of the United States Armed Forces, or a member of a state or federally authorized Urban Search and Rescue team shall be granted a paid leave of absence from the employee's duties without loss of time, efficiency rating, vacation time, personal time, sick leave, or salary on all days during which the employee is engaged in authorized training or duty ordered or authorized by proper authority. Such leave shall not exceed 15 workdays in a fiscal year.

On employment, a district shall provide written notice of the number of workdays of paid leave to which an employee is entitled each fiscal year under Government Code 437.202(a).

On request, a district shall provide to an employee a statement that contains the number of workdays for which the employee claimed paid leave under Government Code 437.202(a) in that fiscal year.

An employee of a district with at least five full-time employees who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty.

*Gov't Code 437.202(a), (d), (e)–(f)*

Called to Duty

A service member of the Texas military forces who is ordered to state active duty or training and other duty by the governor or other proper authority under state law is entitled to the same benefits and protections provided to persons performing service in the uniformed services under 38 U.S.C. 4301–4313 and 4316–4319 (USERRA) and to persons in the military service of the United States under 50 U.S.C. 3901–3959, 3991, and 4011–4026. *Gov't Code 437.213*

*Reemployment*

After Authorized  
Training or Duty

A district may not terminate the employment of an employee who is a member of the military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The em-

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ployee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment. *Gov't Code 437.204*

After Active  
Military Service

Any employee, other than a temporary employee, who leaves a position with a district to enter active military service is entitled to be reemployed by the district in the same position held at the time of the induction, enlistment, or order, or to a position of similar seniority, status, and pay. To be entitled to reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary after the date of induction, enlistment, or call to active military service and must be physically and mentally qualified to perform the duties of the position. *Gov't Code 613.001(3), .002*

An employee who cannot perform the duties of the position because of a disability sustained during military service is entitled to reemployment in a district in a position that the employee can perform and that has like seniority, status, and pay as the former position, or the nearest possible seniority, status, and pay. *Gov't Code 613.003*

To be reemployed, a veteran of the military must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service. Application must be made in writing to the superintendent and have attached to it evidence of the veteran's discharge, separation, or release from military service under honorable conditions. *Gov't Code 613.004*

A person reemployed after active military service shall not be discharged without cause before the first anniversary of the date of the reemployment. *Gov't Code 613.005*

"Military service" means service as a member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, the Texas National Guard, or the Texas State Guard. *Gov't Code 613.001(2)*

Use of Personal  
Leave

An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. This provision applies to any personal or sick leave available under former law or provided by local policy.

A district may adopt a policy providing for paid leave for active military service as part of the consideration of employment.

*Education Code 22.003(d), (e)*

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(LEGAL)

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**Note:** For a detailed treatment of termination and nonrenewal of educator contracts, see policies DFAA and DFAB (Probationary Contracts), DFBA and DFBB (Term Contracts), and DFCA (Continuing Contracts).

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**Withholding Information**

An attempt by any district employee to encourage or coerce a child to withhold information from the child's parent is grounds for discharge or suspension under Education Code 21.104 (probationary contracts), 21.156 (continuing contracts), and 21.211 (term contracts). *Education Code 26.008(b)*

**Discharge of Convicted Employees**

A district shall discharge an employee if the district obtains information through a criminal history record information (CHRI) review that:

1. The employee has been convicted of:
  - a. A felony under Penal Code Title 5;
  - b. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
  - c. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs a or b; and
2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.

**Exception**

However, a district is not required to discharge an employee if the person committed an offense under Title 5, Penal Code, and:

1. The date of the offense is more than 30 years before June 15, 2007; and
2. The employee satisfied all terms of the court order entered on conviction.

**Certification to Commissioner**

Each school year, a superintendent shall certify to the commissioner that the district has complied with the above provisions.

**Sanctions**

The State Board for Educator Certification (SBEC) may impose a sanction on an educator who does not discharge an employee if the educator knew that the employee had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with Education Code 21.009(e), or knew or should have known, through a CHRI review, that the employee has been convicted of an offense described above.

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SBEC may impose a sanction on a superintendent who falsely or inaccurately certified to the commissioner that the district had complied with Education Code 22.085. [See Certification to Commissioner, above]

Termination for  
Failure to Disclose

A district may discharge an employee if the district obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to SBEC or the district. An employee so discharged is considered to have been discharged for misconduct for purposes of Labor Code 207.044 (unemployment compensation).

*Education Code 22.085; 19 TAC 249.15(b)(12), (14)* [See DBAA for Refusal to Hire Convicted Applicants]

**Certain Offenses  
Against Students**

Mandatory  
Termination

If a district receives notice that SBEC has revoked the certificate of a person based on conviction of or placement on deferred adjudication community supervision for an offense for which the person is required to register as a sex offender under Code of Criminal Procedure, Chapter 62, or a conviction of a felony under Penal Code Title 5 if the victim of the offense was under 18 years of age at the time the offense was committed, the district shall:

1. Immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and
2. If the person is employed under a probationary, continuing, or term contract, with the approval of the board or its designee:
  - a. Suspend the person without pay;
  - b. Provide the person with written notice that the person's contract is void [see Notice to Employee, below]; and
  - c. Terminate the employment of the person as soon as practicable.

*Education Code 21.058(a), (c)*

Discretionary  
Termination

If a district becomes aware that a person employed by the district under a probationary, continuing, or term contract has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to the mandatory termination provision above, the district may, with the approval of the board or its designee:

1. Suspend the person without pay;

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2. Provide the person with written notice that the person's contract is void [see Notice to Employee, below]; and
3. Terminate the employment of the person as soon as practicable.

*Education Code 21.058(c-1)*

Notice to Employee      A person's probationary, continuing, or term contract is void if, with the approval of the board or its designee, the district provides written notice to the person, under the mandatory or discretionary termination provisions above, that the person's contract is void. *Education Code 21.058(c-2)*

No Appeal      Action taken by a district under the mandatory or discretionary terminations provisions above is not subject to appeal under Education Code Chapter 21 and the notice and hearing requirements of Chapter 21 do not apply to the action. *Education Code 21.058(e)*

**Invalid or Expired Certification**      An employee's probationary, term, or continuing contract is void if the employee:

1. Does not hold a valid certificate or permit issued by SBEC;
2. Fails to fulfill the requirements necessary to renew or extend the employee's temporary, probationary, or emergency certificate or any other certificate or permit issued under Education Code Chapter 21, Subchapter B; or
3. Fails to comply with any requirement under Education Code Chapter 22, Subchapter C [criminal history review, see DBAA], if the failure results in suspension or revocation of the employee's certificate.

*Education Code 21.0031(a)*

A certificate or permit is not considered to have expired if:

1. The employee has completed the requirements for renewal of the certificate or permit;
2. The employee submitted the request for renewal before the expiration date; and
3. The date the certificate or permit would have expired is before the date SBEC takes action to approve the renewal of the certificate or permit.

*Education Code 21.0031(f)*

District's Options      If a district has knowledge that an employee's contract is void under Education Code 21.0031(a), the district may:

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1. Terminate the employee;
2. Suspend the employee with or without pay; or
3. Retain the employee for the remainder of the school year on an at-will employment basis in a position that does not require a contract under Education Code 21.002, at the employee's existing rate of pay or at a reduced rate.

The employee is not entitled to the minimum salary prescribed by Education Code 21.402.

*Education Code 21.0031(b)*

Exception

A district may not terminate or suspend an employee under 21.0031(b) because of the employee's lack of a valid certificate or permit, or failure to renew or extend a certificate or permit, if:

1. The employee requests an extension from SBEC to renew, extend, or otherwise validate the employee's certificate or permit; and
2. Not later than the tenth day after the date the contract is void, the employee takes necessary measures to renew, extend, or otherwise validate the employee's certificate or permit, as determined by SBEC.

*Education Code 21.0031(b-1)*

No Appeal or  
Chapter 21 Hearing

A school district's decision under Education Code 21.0031(b) is not subject to appeal under Education Code Chapter 21, and the notice and hearing requirements of that chapter do not apply to the decision. *Education Code 21.0031*

Applicability

These void contract provisions do not affect the rights and remedies of a party in an at-will employment relationship and do not apply to a certified teacher assigned to teach a subject for which the teacher is not certified. *Education Code 21.0031; Nunez v. Simms, 341 F.3d 385 (5th Cir. 2003)*

**Report to SBEC**

A superintendent shall report the educator's termination to SBEC if the conditions set forth at Education Code 21.006 exist. [See DHB]

**Report to  
Superintendent**

A principal shall report the educator's termination to the superintendent if the conditions set forth at Education Code 21.006 exist. [See DP]

**Falsification of  
Military Record**

A district may discharge an employee, regardless of whether the employee is employed under an employment contract, if the district determines, based on a reasonable factual basis, that the employee, in obtaining the employee's employment or any benefit re-

TERMINATION OF EMPLOYMENT

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lating to the employee's employment, falsified or otherwise misrepresented any information regarding the employee's military record in a manner that would constitute an offense under Penal Code 32.54.

An employment contract entered into by a district with an employee discharged by the employer under Labor Code Chapter 105 is void and unenforceable as against public policy. [See DF series]

*Labor Code Ch. 105*

TERMINATION OF EMPLOYMENT

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(LOCAL)

**Board's Designee for  
Certain Termination  
Actions**

The Superintendent shall serve as the Board's designee to suspend a contract employee without pay, provide written notice that the person's contract is void, and terminate employment as soon as practicable when the District:

1. Receives notice that an individual's certificate has been revoked by the State Board for Educator Certification (SBEC) for reasons that require immediate action by the District; or
2. Becomes aware that a contract employee has been convicted of or has received deferred adjudication for a felony offense.

[See also DFAA, DFBA, and DFCA, as appropriate.]

PROBATIONARY CONTRACTS  
SUSPENSION/TERMINATION DURING CONTRACT

DFAA  
(LEGAL)

**Discharge**

Any probationary contract employee may be discharged at any time for good cause as determined by the board. "Good cause" is the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state. *Education Code 21.104(a)*

[See DHB regarding circumstances in which a certified employee's dismissal must be reported to the State Board for Educator Certification (SBEC).]

**Suspension**

A district may, for good cause as defined above, suspend an employee without pay in lieu of discharge or pending discharge. The period of suspension may not extend beyond the end of the current school year. *Education Code 21.104(b)*

**Notice**

Before any probationary contract employee is dismissed or suspended without pay for good cause, the employee shall be given reasonable notice in writing of the charges against him or her and an explanation of a district's evidence, set out in sufficient detail to fairly enable the employee to show any error that may exist. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985)

**Hearing**

If the employee is protesting proposed action to suspend or terminate a probationary contract for good cause, under Education Code 21.104, the employee is entitled to a hearing before an independent hearing examiner under Education Code Chapter 21, Subchapter F [see DFD].

Exception

If the employee is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared under Education Code 44.011 [see CEA], the employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F, as determined by the board.

*Education Code 21.1041*

PROBATIONARY CONTRACTS  
SUSPENSION/TERMINATION DURING CONTRACT

DFAA  
(LOCAL)

**Suspension with Pay** A probationary contract employee may be suspended with pay and placed on administrative leave by the Superintendent during an investigation of alleged misconduct by the employee or at any time the Superintendent determines that the District's best interest will be served by the suspension.

PROBATIONARY CONTRACTS  
TERMINATION AT END OF YEAR

DFAB  
(LEGAL)

**Grounds for  
Termination**

The Board may terminate a probationary contract at the end of the contract period if in the Board's judgment such termination will serve the best interests of the District.

**Notice**

The Board shall give the employee notice of its decision to terminate the employment not later than the tenth day before the last day of instruction required under the contract.

The notice must be delivered personally by hand delivery on the campus at which the employee is employed. If the employee is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the employee's address of record with the District. Notice that is postmarked on or before the tenth day before the last day of instruction is considered timely for these purposes.

**No Appeal**

The Board's decision to terminate a probationary contract at the end of a contract period is final and may not be appealed.

*Education Code 21.103(a)*

**Failure to Notify**

If the Board fails to give notice of its decision to terminate a probationary contract within the time prescribed, the Board must employ the employee for the following school year in the same capacity under:

1. A probationary contract, if the person has been employed under a probationary contract for less than three consecutive school years; or
2. A continuing or term contract, according to District policy, if the person has been employed under a probationary contract for three consecutive school years.

*Education Code 21.103(b)*

PROBATIONARY CONTRACTS  
RETURN TO PROBATIONARY STATUS

DFAC  
(LEGAL)

**Upon Change in Professional Capacity**

An employee may be employed under a probationary contract if the employee voluntarily accepts an assignment in a new professional capacity that requires a different class of certificate under Education Code Chapter 21, Subchapter B than the class of certificate held by the employee in the professional capacity in which the employee was previously employed.

This provision does not apply to an employee who is returned by the District to a professional capacity in which the employee was employed by the District before the District employed the employee in the new professional capacity. The employee is entitled to be employed in the original professional capacity under the same contractual status as the status held by the employee during the previous employment by the District in that capacity.

*Education Code 21.102(a-1)* [See 19 TAC 230.33(b) for list of certificate classes]

**In Lieu of Discharge, Termination, or Nonrenewal**

In lieu of discharging a continuing contract employee, terminating a term contract employee, or not renewing a term contract, the District may, with written consent of the employee, return the employee to probationary contract status. *Education Code 21.106(a)*

After Board  
Proposal

Except as provided below, an employee may agree to be returned to probationary status only after receiving written notice that the Board has proposed discharge, termination, or nonrenewal. [See DF series] *Education Code 21.106(b)*

After Notice from  
Superintendent

An employee may agree to be returned to probationary contract status after receiving written notice of the Superintendent's intent to recommend discharge, termination, or nonrenewal.

*Notice*

The notice must inform the employee of the District's offer to return the employee to probationary contract status, the period during which the employee may consider the offer, and the employee's right to seek counsel. The District must provide the employee at least three business days after the employee receives the notice to agree to be returned to probationary contract status. This provision does not require the Superintendent to provide notice of intent to recommend discharge, termination, or nonrenewal.

*Education Code 21.106(d)*

**New Probationary Period**

An employee returned to probationary status must serve a new probationary period as provided by Education Code 21.102 as if the employee were employed by the District for the first time. *Education Code 21.106(c)*

TERM CONTRACTS  
SUSPENSION/TERMINATION DURING CONTRACT

DFBA  
(LEGAL)

**Suspension Without Pay**

A board may, for good cause as determined by the board, suspend an employee without pay:

1. Pending discharge, or
2. In lieu of termination.

The suspension may not extend beyond the end of the school year.

*Education Code 21.211(b)*

**Back Pay**

If an employee is not discharged after being suspended without pay pending discharge, the employee is entitled to back pay for the period of suspension. *Education Code 21.211(c)*

**Grounds for Dismissal**

A board may terminate a term contract and discharge a term contract employee at any time for:

1. Good cause as determined by the board; or
2. A financial exigency that requires a reduction in personnel.

*Education Code 21.211(a)*

**Notice**

Before any term contract employee is dismissed for good cause, the employee shall be given reasonable notice in writing of the charges against him or her and an explanation of a district's evidence, set out in sufficient detail to fairly enable the employee to show any error that may exist. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985)

**Hearing**

If a term contract employee desires a hearing before an independent hearing examiner, the employee must file a written request with the commissioner of education not later than the 15th day after the date the employee receives notice of the proposed termination or suspension without pay. The employee must provide a district with a copy of the request and must provide the commissioner with a copy of the notice.

The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing.

*Education Code 21.251(a), .253* [See DFD]

**Financial Exigency**

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the board in writing not later than the tenth day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract

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[see DFBB] or a hearing under Education Code Chapter 21, Subchapter F, as determined by the board. *Education Code 21.159*

**Report by Principal**

The principal of a district, including a district of innovation, must notify the superintendent not later than the seventh business day after the date of an educator's termination of employment following an alleged incident of misconduct described by Education Code 21.006(b) [see DP]. *Education Code 21.006(b-2); 19 TAC 249.14(e)*

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**Suspension with Pay** A term contract employee may be suspended with pay and placed on administrative leave by the Superintendent during an investigation of alleged misconduct by the employee or at any time the Superintendent determines that the District's best interest will be served by the suspension.

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GROUND FOR NONRENEWAL	The Board may terminate a term contract for a financial exigency that requires a reduction in personnel. <i>Education Code 21.211(a)</i> [See CEA]
REASONS	The Board shall establish by policy reasons for nonrenewal at the end of a school year. <i>Education Code 21.203(b)</i>
EVALUATIONS	<p>Before making a decision not to renew a term contract, the Board shall consider the most recent evaluations if the evaluations are relevant to the reason for the Board's action. <i>Education Code 21.203(a)</i></p> <p>In the case of a classroom teacher, the District shall use the teacher's consecutive appraisals from more than one year, if available, in making employment decisions. <i>Education Code 21.352(e)</i></p> <p>[See DNA and DNB]</p>
NOTICE	<p>Not later than the tenth day before the last day of instruction in a school year, the Board shall notify in writing each employee whose contract is about to expire whether the Board proposes to renew or not renew the contract.</p> <p>The notice must be delivered personally by hand delivery to the employee on the campus at which the employee is employed. If the employee is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the employee's address of record with the District. Notice that is postmarked on or before the tenth day before the last day of instruction is considered timely for these purposes.</p>
FAILURE TO PROVIDE TIMELY NOTICE	<p>The Board's failure to give timely notice of a proposed renewal or nonrenewal constitutes an election to employ the contract employee in the same professional capacity for the following school year.</p> <p><i>Education Code 21.206</i></p>
REQUEST FOR HEARING	<p>If the employee desires a hearing after receiving notice of the proposed nonrenewal, the employee shall notify the Board in writing not later than the 15th day after:</p> <ol style="list-style-type: none"><li>1. The date the employee receives hand delivery of the notice of proposed nonrenewal; or</li><li>2. The date the notice is delivered to the employee's address of record with the District, if the notice is mailed by prepaid certified mail or delivered by express delivery service.</li></ol> <p>The Board shall provide for a hearing to be held not later than the 15th day after receiving written notice from the employee</p>

requesting a hearing unless the parties agree in writing to a different date. The hearing shall be closed unless the employee requests an open hearing and shall be conducted in accordance with rules adopted by the Board.

*Education Code 21.207(a)*

LARGE DISTRICT  
OPTION

In a district with an enrollment of at least 5,000 students, the Board may designate an attorney licensed to practice law in this state to hold the hearing on behalf of the Board, to create a hearing record for the Board's consideration and action, and to recommend an action to the Board.

The designee may not be employed by the District and neither the designee nor a law firm with which the designee is associated may be serving as an agent or representative of the District, an employee in a dispute between the District and an employee, or an organization of school employees, school administrators, or school boards.

Not later than the 15th day after completion of the hearing, the designee shall provide to the Board a record of the hearing and the designee's recommendation of whether the contract should be renewed or not renewed.

The Board shall consider the record of the hearing and the designee's recommendation at the first Board meeting for which notice can be posted, in compliance with the Texas Open Meetings Act, following the receipt of the record and recommendation from the designee, unless the parties agree in writing to a different date.

At the meeting, the Board shall consider the hearing record and the designee's recommendation and allow each party to present an oral argument to the Board. The Board by written policy may limit the amount of time for oral argument. The policy must provide equal time for each party. The Board may obtain advice concerning legal matters from an attorney who has not been involved in the proceedings. The Board may accept, reject, or modify the designee's recommendation.

The Board shall notify the employee in writing of the Board's decision not later than the 15th day after the date of the meeting.

*Education Code 21.207(b-1)*

BOARD HEARING

At the hearing before the Board or the Board's designee, the employee may:

1. Be represented by a representative of the employee's choice;
2. Hear the evidence supporting the reason for nonrenewal;

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3. Cross-examine adverse witnesses; and
4. Present evidence.

*Education Code 21.207(c)*

BOARD DECISION

To evaluate the evidence put before it, the Board shall use the preponderance of the evidence standard of review. Whitaker v. Marshall Indep. Sch. Dist., Tex. Comm'r. of Educ. Decision No. 112-R1-598 (1998)

Following the hearing, the Board shall take the appropriate action and notify the employee in writing of that action within 15 days following the conclusion of the hearing. *Education Code 21.208*

HEARING EXAMINER

The Board may use the process described at DFD. *Education Code 21.207(b)*

NO HEARING

If the employee fails to request a hearing, the Board shall take the appropriate action and notify the employee in writing of that action not later than the 30th day after the date the notice of proposed nonrenewal was sent. *Education Code 21.208*

APPEALS

An employee aggrieved by a decision of the Board to nonrenew a term contract may appeal to the Commissioner for a review of the Board's decision. *Education Code 21.209*

## Reasons

The recommendation to the Board and its decision not to renew a contract under this policy shall not be based on an employee's exercise of Constitutional rights or based unlawfully on an employee's race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. Reasons for proposed nonrenewal of an employee's term contract shall be:

1. Deficiencies pointed out in observation reports, appraisals or evaluations, supplemental memoranda, or other communications.
2. Failure to fulfill duties or responsibilities.
3. Incompetency or inefficiency in the performance of duties.
4. Inability to maintain discipline in any situation in which the employee is responsible for the oversight and supervision of students.
5. Insubordination or failure to comply with official directives.
6. Failure to comply with Board policies or administrative regulations.
7. Excessive absences.
8. Conducting personal business during school hours when it results in neglect of duties.
9. Reduction in force because of financial exigency. [See DFFA]
10. Reduction in force because of a program change. [See DFFB]
11. The employee is not retained at a campus in accordance with the provisions of a campus turnaround plan. [See AIC]
12. Drunkenness or excessive use of alcoholic beverages; or possession, use, or being under the influence of alcohol or alcoholic beverages while on District property, while working in the scope of the employee's duties, or while attending any school- or District-sponsored activity.
13. The illegal possession, use, manufacture, or distribution of a controlled substance, a drug, a dangerous drug, hallucinogens, or other substances regulated by state statutes.
14. Failure to meet the District's standards of professional conduct.
15. Failure to report any arrest, indictment, conviction, no contest or guilty plea, or other adjudication for any felony, any crime

involving moral turpitude, or other offense listed at DH(LOCAL). [See DH]

16. Conviction of or deferred adjudication for any felony, any crime involving moral turpitude, or other offense listed at DH(LOCAL); or conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony. [See DH]
17. Failure to comply with reasonable District requirements regarding advanced coursework or professional improvement and growth.
18. Disability, not otherwise protected by law, that prevents the employee from performing the essential functions of the job.
19. Any activity, school-connected or otherwise, that, because of publicity given it, or knowledge of it among students, faculty, or the community, impairs or diminishes the employee's effectiveness in the District.
20. Any breach by the employee of an employment contract or any reason specified in the employee's employment contract.
21. Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues.
22. A significant lack of student progress attributable to the educator.
23. Behavior that presents a danger of physical harm to a student or to other individuals.
24. Assault on a person on District property or at a school-related function, or on an employee, student, or student's parent regardless of time or place.
25. Use of profanity in the course of performing any duties of employment, whether on or off school premises, in the presence of students, staff, or members of the public, if reasonably characterized as unprofessional.
26. Falsification of records or other documents related to the District's activities.
27. Falsification or omission of required information on an employment application.
28. Misrepresentation of facts to a supervisor or other District official in the conduct of District business.

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29. Failure to fulfill requirements for state licensure or certification, including passing certification or licensing examinations required by state or federal law or by the District, for the employee's assignment.
30. Failure to maintain licensing and certification requirements, including the completion of required continuing education hours, for the employee's assignment.
31. Failure to complete certification or permit renewal requirements, or failure to fulfill the requirements of a deficiency plan, under an Emergency Permit or a Temporary Classroom Assignment Permit.
32. Any attempt to encourage or coerce a child to withhold information from the child's parent or from other District personnel.
33. Any reason that makes the employment relationship void or voidable, such as a violation of federal, state, or local law.
34. Any reason constituting good cause for terminating the contract during its term.

Recommendations  
from Administration

Administrative recommendations for renewal or proposed nonrenewal of term contracts shall be submitted to the Superintendent. A recommendation for proposed nonrenewal shall be supported by any relevant documentation. The final decision on the administrative recommendation to the Board on each employee's contract rests with the Superintendent.

Superintendent's  
Recommendation

The Superintendent shall prepare lists of employees whose contracts are recommended for renewal or proposed nonrenewal by the Board. Supporting documentation, if any, and reasons for the recommendation shall be submitted for each employee recommended for proposed nonrenewal.

The Board shall consider such information, as appropriate, in support of recommendations for proposed nonrenewal and shall then act on all recommendations. If the Board votes to propose nonrenewal for any employees, it shall also decide whether any requested hearing will be conducted by the Board or by an independent hearing examiner.

Notice of Proposed  
Nonrenewal

After the Board votes to propose nonrenewal, the Superintendent or designee shall deliver written notice of proposed nonrenewal in accordance with law.

If the notice of proposed nonrenewal does not contain a statement of the reason or all the reasons for the proposed action, and the employee requests a hearing, the District shall give the employee

notice of all reasons for the proposed nonrenewal at a reasonable time before the hearing.

The Board has chosen to designate the type of hearing for proposed nonrenewals on a case-by-case basis. In the notice of proposed nonrenewal, the employee shall receive notice of whether the Board [see REQUEST FOR BOARD HEARING, below] or an independent hearing examiner appointed by the commissioner of education [see REQUEST FOR APPOINTMENT OF HEARING EXAMINER, below] will conduct the hearing.

**Request for  
Appointment of  
Hearing Examiner**

If the notice of proposed nonrenewal states that the nonrenewal hearing will be conducted by an independent hearing examiner, the employee may request a hearing by filing a written request with the commissioner, and providing the Board a copy of the request, not later than the 15th day after the date the employee received the notice of proposed nonrenewal.

**Hearing Procedures**

The hearing shall be conducted by an independent hearing examiner in accordance with the process described at DFD.

**Board Decision**

Following the hearing, the Board shall take appropriate action in accordance with DFD.

**Request for Board  
Hearing**

If the notice of proposed nonrenewal states that the nonrenewal hearing will be conducted by the Board, the employee may request a hearing by providing written notice to the Board not later than the 15th day after the date the employee received the notice of proposed nonrenewal.

When a timely request for a hearing on a proposed nonrenewal is received by the presiding officer, the Board shall notify the employee whether the hearing will be conducted by the Board [see HEARING BY THE BOARD, below] or an attorney designated by the Board [see HEARING BY AN ATTORNEY DESIGNATED BY THE BOARD, below].

In either case, the hearing shall be held not later than the 15th day after receipt of the request, unless the parties mutually agree to a delay. The employee shall be given notice of the hearing date as soon as it is set.

**Hearing by the Board**

Unless the employee requests that the hearing be open, the hearing shall be conducted in closed meeting with only the members of the Board, the employee, the Superintendent, their representatives, and such witnesses as may be called in attendance. Witnesses may be excluded from the hearing until called to present evidence. The employee and the administration may choose a representative. Notice, at least five days in advance of the hearing, shall be given by each party intending to be represented, including

the name of the representative. Failure to give such notice may result in postponement of the hearing.

Hearing Procedures

The conduct of the hearing shall be under the presiding officer's control and shall generally follow the steps listed below:

1. After consultation with the parties, the presiding officer shall impose reasonable time limits for presentation of evidence and closing arguments.
2. The hearing shall begin with the administration's presentation, supported by such proof as it desires to offer.
3. The employee may cross-examine any witnesses for the administration.
4. The employee may then present such testimonial or documentary proof, as desired, to offer in rebuttal or general support of the contention that the contract be renewed.
5. The administration may cross-examine any witnesses for the employee and offer rebuttal to the testimony of the employee's witnesses.
6. Closing arguments may be made by each party.

A record of the hearing shall be made so that a certified transcript can be prepared, if required.

Board Decision

The Board may consider only evidence presented at the hearing. After all the evidence has been presented, if the Board determines that the reasons given in support of the recommendation to not renew the employee's contract are lawful, supported by the evidence, and not arbitrary or capricious, it shall so notify the employee by a written notice not later than the 15th day after the date on which the hearing is concluded. This notice shall also include the Board's decision on renewal, which decision shall be final.

**Hearing by an  
Attorney Designated  
by the Board**

The hearing must be private unless the employee requests in writing that the hearing be public, except that the attorney may close the hearing to maintain decorum. If the employee does not request a public hearing, only the attorney designated by the Board, the employee, the Superintendent, their representatives, and witnesses will be permitted to be in attendance, and witnesses may be excluded from the hearing until called to present evidence. The employee and the administration may choose a representative. Notice, at least five days in advance of the hearing, shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

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The conduct of the hearing shall be under the control of the attorney designated by the Board and shall generally follow the steps listed at HEARING BY THE BOARD.

Not later than the 15th day after the completion of the hearing, the attorney shall provide to the Board a record of the hearing and his or her recommendation on renewal.

Board Review

The Board shall consider the record of the hearing and the attorney's recommendation at the first Board meeting for which notice can be posted, unless the parties agree in writing to a different date. The Board shall notify the employee of the meeting date as soon as it is set. At the meeting, the Board shall allow each party an equal amount of time to present oral arguments. The Board shall notify the employee in writing of the Board's decision on renewal not later than the 15th day after the date of the meeting.

**No Hearing**

If the employee fails to request a hearing, the Board shall take the appropriate action and notify the employee in writing of that action not later than the 30th day after the date the notice of proposed nonrenewal was sent.

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[Exhibit A—Notice of Proposed Term Contract Nonrenewal](#)

[Exhibit B—Documentation of Delivery: Notice of Proposed Nonrenewal](#)

[Exhibit C—Notice Of Term Contract Nonrenewal](#)

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**Note:** The forms on the following pages are provided to assist the District in notifying employees of term contract nonrenewal.

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## Exhibit A—Notice of Proposed Term Contract Nonrenewal

Date of notice: \_\_\_\_\_

Employee name: \_\_\_\_\_

On \_\_\_\_\_ (*date of meeting*), the Board voted to propose nonrenewal of your employment contract for the following reasons:

[List all applicable reasons from DFBB(LOCAL).  
Attach an additional sheet of paper if necessary.]

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Attached is a copy of the District's DFBB(LOCAL) policy regarding nonrenewal of term contracts.

The Board has determined that any hearing on this proposed nonrenewal will be conducted as follows:

- ☐ Before the Board or designee. To request a hearing on the Board's proposed nonrenewal of your employment contract, you must submit a written request to the Board not later than the 15th day after the date you receive this notice. The Board will notify you whether the hearing will be conducted by the Board or an attorney designated by the Board.
- ☐ Before an independent hearing examiner appointed by the Commissioner of Education. To request a hearing on the Board's proposed nonrenewal of your employment contract, you must submit a written request to the Commissioner of Education for appointment of an independent hearing examiner, and provide the Board a copy of the request, not later than the 15th day after the date you receive this notice.

If you do not request a hearing within 15 days of receiving this notice, the Board will vote to nonrenew your contract.

Please direct questions regarding the proposed nonrenewal of your contract to the Superintendent.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title



## **Exhibit B—Documentation of Delivery: Notice of Proposed Nonrenewal**

(For office use only. This document is to be retained in the employee's personnel file.)

Employee name: \_\_\_\_\_

(Notice must be delivered personally by hand delivery to the employee on the campus at which the employee is employed.)

### **Hand delivery:**

Completed: \_\_\_\_\_ Attempted: \_\_\_\_\_ (*check only one*)

Date: \_\_\_\_\_ By: \_\_\_\_\_ (*name*)

(If the employee is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the employee's address of record with the District.)

### **Mail or delivery service:**

Sent by: Certified mail \_\_\_\_\_ Express delivery service \_\_\_\_\_ (*check only one*)

Employee's address of record:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_ (*name*)



## Exhibit C—Notice Of Term Contract Nonrenewal

(To be used to notify an employee of the Board's final action to nonrenew a term contract. If the employee fails to request a hearing, this notice must be provided not later than the 30th day after the date notice of proposed nonrenewal was sent to the employee.)

Date of notice: \_\_\_\_\_

Employee name: \_\_\_\_\_

On \_\_\_\_\_ (*date of meeting*), the Board took final action to nonrenew your employment contract. Your employment with the District will end effective the last duty day of the school year.

Please direct questions regarding the nonrenewal of your contract to the Superintendent.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

DFD  
(LEGAL)

**Applicability**

This hearing process applies only if an employee requests a hearing after receiving notice of a proposed decision to:

1. Terminate a continuing contract at any time, except as provided below;
2. Terminate a probationary or term contract before the end of the contract period, except as provided below; or
3. Suspend without pay.

**Exception**

This hearing process does not apply to a decision to:

1. Terminate a probationary contract at the end of the contract term;
2. Not renew a term contract, unless the Board has adopted this process for nonrenewals; or
3. Terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the Board has decided to use this hearing process.

*Education Code 21.251*

**Request for Hearing**

Not later than the 15th day after the date the employee receives notice of one of the proposed contract actions listed above, the employee must file a written request with the Commissioner for a hearing before a hearing examiner. The employee must provide the District with a copy of the request and must provide the Commissioner with a copy of the notice. The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing. *Education Code 21.253*

**Assignment of  
Hearing Examiner by  
Agreement**

The parties may agree to select a hearing examiner from the list maintained by the Commissioner or a person who is not certified to serve as a hearing examiner, provided that person is licensed to practice law in Texas. If the parties agree on a hearing examiner the parties shall, before the date the Commissioner is permitted to assign a hearing examiner, notify the Commissioner in writing of the agreement, including the name of the hearing examiner selected.

**By Appointment**

If the parties do not select a hearing examiner by agreement, the Commissioner shall assign the hearing examiner not earlier than the sixth business day and not later than the tenth business day after the date on which the Commissioner receives the request for a

TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

DFD  
(LEGAL)

hearing. When a hearing examiner has been assigned, the Commissioner shall notify the parties immediately.

Rejection

The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject an assigned hearing examiner for cause. A rejection must be in writing and filed with the Commissioner not later than the third day after the date of notification of the hearing examiner's assignment. If the parties agree to reject the hearing examiner or if the Commissioner determines that one party has good cause for the rejection, the Commissioner shall assign another hearing examiner.

**Finality of Decision**

After the employee receives notice of the proposed contract action, the parties may agree in writing that the hearing examiner's decision be final and nonappealable on all or some issues.

*Education Code 21.254*

**Powers of Hearing Examiner**

The hearing examiner may issue subpoenas, administer oaths, rule on motions and the admissibility of evidence, maintain decorum, schedule and recess the proceedings, allow the parties to take depositions or use other means of discovery, and make any other orders as provided by Commissioner rule.

**Conduct of Hearing**

The hearing and any depositions must be held within the geographical boundaries of the District or at the regional education service center that serves the District.

*Education Code 21.255*

Schedule  
Restriction

A hearing before a hearing examiner may not be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree.  
*Education Code 21.257(c)*

Private

A hearing before a hearing examiner shall be private unless the employee makes a written request for a public hearing.

*Exception*

If necessary to maintain decorum, the hearing examiner may close a hearing that an employee has requested be public.

*Protection of Witnesses*

To protect the privacy of a witness who is a child, the hearing examiner may close the hearing to receive the testimony or order that the testimony be presented by procedures in Article 38.071, Code of Criminal Procedure.

Employee Rights

At the hearing, the employee has the right to:

1. Be represented by a representative of the employee's choice;
2. Hear the evidence on which the charges are based;
3. Cross-examine each adverse witness; and

TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

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4. Present evidence.

The hearing is not subject to the Administrative Procedure Act.

The hearing shall be conducted in the same manner as a trial without a jury in state district court. A certified shorthand reporter shall record the hearing.

Evidence

The Texas Rules of Civil Evidence shall apply at the hearing. An evaluation or appraisal of the teacher is presumed to be admissible at the hearing. The hearing examiner's findings of fact and conclusions of law shall be presumed to be based only on admissible evidence.

Burden of Proof

The District has the burden of proof by a preponderance of the evidence at the hearing.

*Education Code 21.256*

Costs

The District shall bear the cost of the services of the hearing examiner and certified shorthand reporter and the production of any original hearing transcript. Each party shall bear its costs of discovery, if any, and its attorney's fees. *Education Code 21.255(e)*

**Recommendation**

Not later than the 60th day after the date on which the Commissioner receives a request for a hearing before a hearing examiner, the hearing examiner shall complete the hearing and make a written recommendation. The recommendation must include findings of fact and conclusions of law. The recommendation may include a proposal for granting relief, including reinstatement, back pay, or employment benefits. The proposal for relief may not include attorney's fees or other costs associated with the hearing or appeals from the hearing. The hearing examiner shall send a copy of the recommendation to each party, the Board President, and the Commissioner.

Waiver of Deadline

The parties may agree in writing to extend by not more than 45 days the right to a recommendation by the date specified above.

*Education Code 21.257*

**Consideration**

The Board or a designated subcommittee shall consider the hearing examiner's record and recommendation at the first Board meeting for which notice can be posted in compliance with the open meetings laws. The meeting must be held not later than the 20th day after the date that the Board President receives the hearing examiner's recommendation and record.

**Oral Argument and  
Recording**

At the meeting, the Board or subcommittee shall allow each party to present an oral argument to the Board or subcommittee. The

TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

DFD  
(LEGAL)

Board may, by written policy, limit the amount of time for oral argument, provided equal time is allotted each party. A certified shorthand reporter shall record any such oral argument.

Legal Advice

The Board or subcommittee may obtain advice from an attorney who has not been involved in the proceedings.

*Education Code 21.258, .260*

**Decision**

Not later than the tenth day after the date on which the meeting to consider the hearing examiner's recommendation is held, the Board or subcommittee shall announce its decision, which must include findings of fact and conclusions of law, and may include a grant of relief.

The Board or subcommittee may adopt, reject, or change the hearing examiner's conclusions of law or proposal for granting relief. A determination by the hearing examiner regarding good cause for the suspension of an employee without pay or the termination of a probationary, continuing, or term contract is a conclusion of law and may be adopted, rejected, or changed by the Board or Board subcommittee.

The Board may reject or change a finding of fact made by the hearing examiner:

1. Only after reviewing the record of the proceedings; and
2. Only if the finding of fact is not supported by substantial evidence.

The Board or subcommittee shall state in writing the reason for and legal basis for a change or rejection.

*Education Code 21.257, .259*

Recording

A certified shorthand reporter shall record the announcement of the decision. The District shall bear the cost of the reporter's services.

*Education Code 21.260*

**Record of Proceedings**

The Commissioner shall consider the appeal solely on the basis of the local record and may not consider any additional evidence or issue. *Education Code 21.301(c)*

The record of the proceedings before the independent hearing examiner shall include:

1. The transcripts of proceedings at the local level;
2. All evidence admitted;
3. All offers of proof;

TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

DFD  
(LEGAL)

4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the recommendation of the independent hearing examiner;
7. The transcript of the oral argument before the Board or Board subcommittee;
8. The decision of the Board or Board subcommittee; and
9. If applicable, the Board or Board subcommittee's written reasons for changing the recommendation of the independent hearing examiner.

*19 TAC 157.1072(e)*

TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

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(LOCAL)

**Time Limits for Oral  
Argument**

The Board shall consider the hearing examiner's record and recommendation at the first Board meeting for which notice can be posted in compliance with the open meetings laws.

The Board shall allow ten minutes per party for oral argument. Administration shall be offered the opportunity to present argument first and may use a portion of the designated time for rebuttal after the other party has presented argument.

The Board reserves the right to grant additional time in equal amount to both parties, depending on the complexity of the issues and solely at the Board's discretion.

TERMINATION OF EMPLOYMENT  
RESIGNATION

DFE  
(LEGAL)

**Resignation without  
Consent (Unilateral  
Resignation)**

An educator employed under a probationary contract for the following school year, or under a term or continuing contract, may relinquish the position and leave district employment at the end of the school year without penalty by filing a written resignation with a board or a board's designee not later than the 45th day before the first day of instruction of the following school year.

A written resignation mailed by prepaid certified or registered mail to a board president or a board's designee at the post office address of the district is considered filed at the time of mailing.

*Education Code 21.105(a), .160(a), .210(a)*

An unequivocal resignation filed not later than the 45th day before the first day of instruction of the following school year is effective upon filing with a district and the district cannot reject such a resignation. The resignation cannot be withdrawn by the teacher based on an argument that the district has not accepted the resignation. *Fantroy v. Dallas Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 034-R9-0206 (Mar. 5, 2009)*; *Garcia v. Miles Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 055-R1-503 (Nov. 30, 2006)*.

**Resignation with  
Consent**

The educator may resign, with the consent of the board or the board's designee, at any other time. *Education Code 21.105(b), .160(b), .210(b)*

**Sanctions for  
Abandonment of  
Contract**

On written complaint by a district, the State Board for Educator Certification (SBEC) may impose sanctions against an educator who is employed under a probationary contract, or under a continuing or term contract, for the following school year, and who:

1. Resigns;
2. Fails without good cause to comply with the resignation deadline or the provision regarding resignation by consent; and
3. Fails without good cause to perform the contract.

*Education Code 21.105(c), .160(c), .210(c)*

Acceptance or approval of a resignation indicates consent to abandonment of contract. *Quitman Indep. Sch. Dist. v. Wilkerson, Tex. Comm'r of Educ. Decision No. 142-TTC-698 (Dec. 2, 1999)*; *Houston Indep. Sch. Dist. v. Johnson, Tex. Comm'r of Educ. Decision No. 054-TTC-1196 (Sept. 28, 1998)*

SBEC shall not pursue sanctions against an educator who is alleged to have abandoned his or her contract unless a board:

1. Submits a written complaint within 30 calendar days after the effective date of the educator's separation from employment

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from the district. Unless the district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract.

2. Renders a finding that good cause did not exist under Education Code 21.105(c)(2) (probationary contract), 21.160(c)(2) (continuing contract), or 21.210(c)(2) (term contract). This finding constitutes prima facie evidence of the educator's lack of good cause but is not a conclusive determination.
3. Submits the following required attachments to the written complaint:
  - a. The educator's resignation letter, if any;
  - b. The agreement with the educator regarding the effective date of separation from employment, if any;
  - c. The educator's contract; and
  - d. Board meeting minutes indicating a finding of "no good cause." If the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting.

*19 TAC 249.14(j)*

**Report to SBEC**

A superintendent shall report the educator's resignation to SBEC if the conditions set forth at Education Code 21.006 exist. [See DHB] *Education Code 21.006*

**Investigation**

A superintendent of a district, including a district of innovation, shall complete an investigation of an educator that involves evidence that the educator may have abused or otherwise committed an unlawful act, was involved in a romantic relationship with, or solicited or engaged in sexual contact with a student or minor, despite the educator's resignation from employment before completion of the investigation. *Education Code 21.006(b-1); 19 TAC 249.14(d)(3)(C)*

**Report by Principal**

A person who serves as a principal in a district, including a district of innovation, must notify the superintendent, and may be subject to sanctions for failure to do so, not later than the seventh business day after the date of an educator's resignation following an alleged incident of misconduct described by Education Code 21.006(b) [see DP]. *Education Code 21.006(b-2); 19 TAC 249.14(e)*

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**General  
Requirements**

All resignations shall be submitted in writing to the Superintendent or designee. The employee shall give reasonable notice and shall include in the letter a statement of the reasons for resigning. A pre-paid certified or registered letter of resignation shall be considered submitted upon mailing.

**At-Will Employees**

The Superintendent or designee shall be authorized to accept the resignation of an at-will employee at any time.

**Contract Employees**

The Superintendent or designee shall be authorized to receive a contract employee's resignation effective at the end of the school year or submitted after the last day of the school year and before the penalty-free resignation date. The resignation requires no further action by the District and is accepted upon receipt.

The Superintendent or other person designated by Board action shall be authorized to accept a contract employee's resignation submitted or effective at any other time. The Superintendent or other Board designee shall either accept the resignation or submit the matter to the Board in order to pursue sanctions allowed by law.

**Withdrawal of  
Resignation**

Once submitted and accepted, the resignation of a contract employee may not be withdrawn without consent of the Superintendent.

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**Board Authority**

A board is charged with the responsibility of governance of a district; governance includes the making of responsible choices in managing the finances and personnel of the district. Stidham v. Anahuac Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 205-R2-687 (1990) (upholding reduction in force due to financial exigency)

A district is always free to change its organizational structure as it seeks to increase its efficiency. Wasserman v. Nederland Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 171-R1-784 (1988)

**Consideration for  
Open Positions**

The commissioner of education has held that, when a position is eliminated due to a necessary reduction in force, a district must transfer the employee to a different position if the teacher meets a district's objective criteria for that position. Objective criteria may include credentials, education, experience, applying for the position, and interviewing for the position. A district need not offer a position to a teacher who refuses to apply and interview for an open position. Amerson v. Houston Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 022-R2-1202 (2003)

**Probationary  
Contract**

A probationary contract employee may be discharged at any time for good cause as determined by the board. If the employee is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared under Education Code 44.011 [see CEA], the employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the board. *Education Code 21.104(a), .1041(2)*

A board may terminate a probationary contract at the end of the contract period if in the board's judgment such termination will serve the best interests of the district. *Education Code 21.103(a)*

**Term Contract**

A board may terminate a term contract and discharge a term contract employee at any time due to a financial exigency that requires a reduction in personnel. *Education Code 21.211(a)*

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the board in writing not later than the tenth day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner)

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[see DFD], as determined by the board. *Education Code 21.159(a), (b)(2)*

**Continuing Contract**

A teacher employed under a continuing contract may be released and the teacher's employment terminated at the end of a school year because of a necessary reduction of personnel by the district. A necessary reduction of personnel shall be made primarily based upon teacher appraisals administered under Education Code 21.352 in the specific teaching fields and other criteria as determined by the board. *Education Code 21.157*

Before a teacher employed under a continuing contract may be released because of a necessary reduction of personnel, the board must notify the teacher in writing of the proposed action and the grounds for the action. *Education Code 21.158(a)*

If the teacher desires to protest the proposed necessary reduction of personnel, the teacher must notify the board in writing not later than the tenth day after the date the teacher receives notice. *Education Code 21.159(a)*

A teacher who timely notifies the board is entitled to a hearing in a manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or in the manner provided under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the board. *Education Code 21.159(b)*

If the teacher does not timely request a hearing the board shall take the appropriate action and notify the teacher in writing not later than the 30th day after the date the board sent the notice of the proposed necessary reduction in personnel. *Education Code 21.159(c)*

**Financial Exigency**

A board may adopt a resolution declaring a financial exigency for the district. *Education Code 44.011* [See CEA]

Hearing Examiner

The independent hearing examiner process does not apply to a decision to terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the board has decided to use this hearing process. *Education Code 21.251*

**Warn Act**

Local governments are not covered by the federal Worker Adjustment and Retraining Notification Act (WARN Act) (plant closings and mass layoffs). *20 C.F.R. 639.3(a)(ii)*

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**Plan to Reduce  
Personnel Costs**

If the Superintendent determines that there is a need to reduce personnel costs, the Superintendent shall develop, in consultation with the Board as necessary, a plan for reducing costs that may include one or more of the following:

- Salary reductions [see DEA];
- Furloughs, if the District has received from the commissioner of education certification of a reduction in funding under Education Code 42.009 [see CBA and DEA];
- Reductions in force of contract personnel due to financial exigency, if the District meets the standard for declaring a financial exigency as defined by the commissioner [see CEA and provisions at REDUCTION IN FORCE DUE TO FINANCIAL EXIGENCY, below];
- Reductions in force of contract personnel due to program change [see DFFB]; or
- Other means of reducing personnel costs.

A plan to reduce personnel costs may include the reduction of personnel employed pursuant to employment arrangements not covered at APPLICABILITY, below.

- See DCD for the termination at any time of at-will employment.
- See DFAB for the termination of a probationary contract at the end of the contract period.
- See DFCA for the termination of a continuing contract, if applicable.
- See DCE for the termination at the end of the contract period of a contract not governed by Chapter 21 of the Education Code.

**Reduction in Force  
Due to Financial  
Exigency**

Applicability

The following provisions shall apply when a reduction in force due to financial exigency requires:

1. The nonrenewal or termination of a term contract;
2. The termination of a probationary contract during the contract period; or
3. The termination of a contract not governed by Chapter 21 of the Education Code during the contract period.

**Definitions**

Definitions used in this policy are as follows:

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1. "Nonrenewal" shall mean the termination of a term contract at the end of the contract period.
2. "Discharge" shall mean termination of a contract during the contract period.

**General Grounds**

A reduction in force may take place when the Superintendent recommends and the Board adopts a resolution declaring a financial exigency. [See CEA] A determination of financial exigency constitutes sufficient reason for nonrenewal or sufficient cause for discharge.

**Employment Areas**

When a reduction in force is to be implemented, the Superintendent shall recommend the employment areas to be affected.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.
3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education.
4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.
5. Counseling programs.
6. Library programs.
7. Nursing and other health services programs.
8. An educational support program that does not provide direct instruction to students.
9. Other District-wide programs.
10. An individual campus.
11. Any administrative position, unit, or department.
12. Programs funded by state or federal grants or other dedicated funding.
13. Other contractual positions.

The Superintendent's recommendation may address whether any employment areas should be:

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1. Combined or adjusted (e.g., “elementary programs” and “compensatory education programs” can be combined to identify an employment area of “elementary compensatory education programs”); and/or
2. Applied on a District-wide or campus-wide basis (e.g., “the counseling program at [named elementary campus]”).

The Board shall determine the employment areas to be affected.

**Criteria for Decision**

The Superintendent or designee shall apply the following criteria to the employees within an affected employment area when a reduction in force will not result in the nonrenewal or discharge of all staff in the employment area. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth.

1. Qualifications for Current or Projected Assignment: Appropriate certification, which may include multiple or composite certifications, bilingual certification, licensure, endorsement, and/or specialized or advanced content-specific training or skills for the current or projected assignment.
2. Performance: Effectiveness, as reflected by:
  - a. The most recent formal appraisal and, if available, consecutive formal appraisals from more than one year [see DNA]; and
  - b. Any other written evaluative information, including disciplinary information, from the last 36 months.

If the Superintendent or designee at his or her discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, he or she may proceed to apply the remaining criteria in the order listed below.

3. Extra Duties: Currently performing an extra-duty assignment, such as department or grade-level chair, band director, athletic coach, or activity sponsor.
4. Professional Background: Professional education and work experience related to the current or projected assignment.
5. Seniority: Length of service in the District, as measured from the employee’s most recent date of hire.

REDUCTION IN FORCE  
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Superintendent Recommendation	The Superintendent shall recommend to the Board the nonrenewal or discharge of the identified employees within the affected employment areas.
Board Vote	<p>After considering the Superintendent's recommendations, the Board shall determine the employees to be proposed for nonrenewal or discharge, as appropriate.</p> <p>If the Board votes to propose nonrenewal of one or more employees, the Board shall specify the manner of hearing in accordance with DFBB(LOCAL).</p> <p>If the Board votes to propose discharge of one or more employees, the Board shall determine whether the hearing will be conducted by a TEA-appointed hearing examiner [see DFD] or will be a local hearing under Education Code 21.207 [see DFBB].</p>
Notice	<p>The Superintendent or designee shall provide each employee written notice of the proposed nonrenewal or discharge, as applicable. The notice shall include:</p> <ol style="list-style-type: none"><li>1. The proposed action, as applicable;</li><li>2. A statement of the reason for the proposed action; and</li><li>3. Notice that the employee is entitled to a hearing of the type determined by the Board.</li></ol>
<b>Consideration for Available Positions</b>	<p>An employee who has received notice of proposed nonrenewal or discharge may apply for available positions for which he or she wishes to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures to be considered for a particular vacancy.</p> <p>If the employee meets the District's objective criteria for the position and is the most qualified internal applicant, the District shall offer the employee the position until:</p> <ol style="list-style-type: none"><li>1. Final action by the Board to end the employee's contract, if the employee does not request a hearing.</li><li>2. The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.</li></ol>
<b>Hearing Request</b> Nonrenewal: Term Contract	An employee receiving notice of proposed nonrenewal of a term contract may request a hearing in accordance with DFBB.

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Discharge: Chapter 21 Contract	An employee receiving notice of proposed discharge from a contract governed by Chapter 21 of the Education Code may request a hearing. The hearing shall be conducted in accordance with DFD or the nonrenewal hearing process in DFBB, as determined by the Board and specified in the notice of proposed discharge.
Discharge: Non-Chapter 21 Contract	An employee receiving notice of proposed discharge during the period of an employment contract not governed by Chapter 21 of the Education Code may request a hearing before the Board or its designee in accordance with DCE.
<b>Final Action</b>	
Hearing Requested	If the employee requests a hearing, the Board shall take final action after the hearing in accordance with DCE, DFBB, or DFD, as applicable, and shall notify the employee in writing.
No Hearing Requested	If the employee does not request a hearing, the Board shall take final action in accordance with DCE, DFBB, or DFD, as applicable, and shall notify the employee in writing.

REDUCTION IN FORCE  
PROGRAM CHANGE

DFFB  
(LOCAL)

**Applicability**

This policy shall apply when a reduction in force due to a program change requires the nonrenewal of a term contract. A program change may be due to, for example, a redirection of resources; efforts to improve efficiency; a change in enrollment; a lack of student response to particular course offerings; legislative revisions to programs; or a reorganization or consolidation of two or more individual schools, departments, or school districts.

**Definitions**

Definitions used in this policy are as follows:

1. "Program change" shall mean any elimination, curtailment, or reorganization of a program, department, school operation, or curriculum offering, including, for example, a change in curriculum objectives; a modification of the master schedule; the restructuring of an instructional delivery method; or a modification or reorganization of staffing patterns in a department, on a particular campus, or District-wide.
2. "Nonrenewal" shall mean the termination of a term contract at the end of the contract period.

**General Grounds**

A reduction in force may take place when the Superintendent recommends and the Board approves a program change. A determination of a program change constitutes sufficient reason for nonrenewal.

**Employment Areas**

When a reduction in force is to be implemented, the Superintendent shall recommend the employment areas to be affected.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.
3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education.
4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.
5. Counseling programs.
6. Library programs.
7. Nursing and other health services programs.
8. An educational support program that does not provide direct instruction to students.

REDUCTION IN FORCE  
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9. Other District-wide programs.
10. An individual campus.
11. Any administrative position, unit, or department.
12. Programs funded by state or federal grants or other dedicated funding.
13. Other contractual positions.

The Superintendent's recommendation may address whether any employment areas should be:

1. Combined or adjusted (e.g., "elementary programs" and "compensatory education programs" can be combined to identify an employment area of "elementary compensatory education programs"); and/or
2. Applied on a District-wide or campus-wide basis (e.g., "the counseling program at [named elementary campus]").

The Board shall determine the employment areas to be affected.

Criteria for Decision

The Superintendent or designee shall apply the following criteria to the employees within an affected employment area when a program change will not result in the nonrenewal of all staff in the employment area. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth.

1. Qualifications for Current or Projected Assignment: Appropriate certification, which may include multiple or composite certifications, bilingual certification, licensure, endorsement, and/or specialized or advanced content-specific training or skills for the current or projected assignment.
2. Performance: Effectiveness, as reflected by:
  - a. The most recent formal appraisal and, if available, consecutive formal appraisals from more than one year [see DNA]; and
  - b. Any other written evaluative information, including disciplinary information, from the last 36 months.

If the Superintendent or designee at his or her discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, he

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or she may proceed to apply the remaining criteria in the order listed below.

3. Extra Duties: Currently performing an extra-duty assignment, such as department or grade-level chair, band director, athletic coach, or activity sponsor.
4. Professional Background: Professional education and work experience related to the current or projected assignment.
5. Seniority: Length of service in the District, as measured from the employee's most recent date of hire.

Superintendent Recommendation      The Superintendent shall recommend to the Board the nonrenewal of the identified employees within the affected employment areas.

Board Vote      After considering the Superintendent's recommendations, the Board shall determine the employees to be proposed for nonrenewal, as appropriate. If the Board votes to propose nonrenewal of one or more employees, the Board shall specify the manner of hearing in accordance with DFBB(LOCAL).

Notice      The Superintendent or designee shall provide each employee written notice of the proposed nonrenewal. The notice shall include a statement of the reason for the proposed action and notice that the employee is entitled to a hearing of the type determined by the Board.

**Consideration for Available Positions**      An employee who has received notice of proposed nonrenewal may apply for available positions for which he or she wishes to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures to be considered for a particular vacancy.

If the employee meets the District's objective criteria for the position and is the most qualified internal applicant, the District shall offer the employee the position until:

1. Final action by the Board to end the employee's contract, if the employee does not request a hearing.
2. The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.

**Hearing Request**      An employee receiving notice of proposed nonrenewal of a term contract may request a hearing in accordance with DFBB.

**Final Action**  
Hearing Requested      If the employee requests a hearing, the Board shall take final action after the hearing in accordance with DFBB and shall notify the employee in writing.

REDUCTION IN FORCE  
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No Hearing  
Requested

If the employee does not request a hearing, the Board shall take final action in accordance with DFBB and shall notify the employee in writing.

EMPLOYEE RIGHTS AND PRIVILEGES

DG  
(LEGAL)

**Employee Free  
Speech**

District employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.

*Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) [See also GKD]

**Whistleblower  
Protection**

A board or its agents shall not suspend or terminate the employment of, or take other adverse personnel action against, an employee who in good faith reports a violation of law by a district or another public employee to an appropriate law enforcement authority.

A "report" is made to an "appropriate law enforcement authority" if the authority is a part of a state or local governmental entity or the federal government that the employee in good faith believes is authorized to:

1. Regulate under or enforce the law alleged to be violated in the report; or
2. Investigate or prosecute a violation of criminal law.

*Gov't Code 554.002*

A supervisor who suspends or terminates the employment of or takes an adverse personnel action against an employee for reporting a violation of law shall be subject to civil penalties. *Gov't Code 554.008*

**Definitions**

"Employee" means an employee or appointed officer who is paid to perform services for a district. It does not include independent contractors. *Gov't Code 554.001(4)*

"Law" means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance. *Gov't Code 554.001(1)*

A "good faith" belief that a violation of the law occurred means that:

1. The employee believed that the conduct reported was a violation of law; and
2. The employee's belief was reasonable in light of the employee's training and experience.

*Wichita County v. Hart*, 917 S.W.2d 779 (Tex. 1996)

EMPLOYEE RIGHTS AND PRIVILEGES

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A “good faith” belief that a law enforcement authority is an appropriate one means:

1. The employee believed the governmental entity was authorized to:
  - a. Regulate under or enforce the law alleged to be violated in the report, or
  - b. Investigate or prosecute a violation of criminal law; and
2. The employee’s belief was reasonable in light of the employee’s training and experience.

Tex. Dep’t of Transp. v. Needham, 82 S.W.3d 314 (Tex. 2002)

**Whistleblower  
Complaints**

An employee who alleges a violation of whistleblower protection may sue a district for injunctive relief, actual damages, court costs, and attorney’s fees, as well as other relief specified in Government Code 554.003. *Gov’t Code 554.003*

Initiate Grievance

Before suing, an employee must initiate action under a district’s grievance policy or other applicable policies concerning suspension or termination of employment or adverse personnel action.

The employee must invoke a district’s grievance procedure not later than the 90th day after the date on which the alleged suspension, termination, or other adverse employment action occurred or was discovered by the employee through reasonable diligence.

Legal Action

If a board does not render a final decision before the 61st day after grievance procedures are initiated, the employee may elect to:

1. Exhaust a district’s grievance procedures, in which case the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under Government Code Chapter 554; or
2. Terminate district grievance procedures and sue within the time lines established by Government Code 554.005 and 554.006.

*Gov’t Code 554.005, 554.006* [See DGBA regarding grievance procedures]

Burden of Proof

If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.

EMPLOYEE RIGHTS AND PRIVILEGES

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<b>Affirmative Defense</b>	<p>It is an affirmative defense to a whistleblower suit that the district would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under the whistleblower law.</p> <p><i>Gov't Code 554.004</i></p>
<b>Notice of Rights</b>	<p>A board shall inform its employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. <i>Gov't Code 554.009</i></p>
<b>Right to Report a Crime</b>	<p>A district employee may report a crime witnessed at the school to any peace officer with authority to investigate the crime. A district may not adopt a policy requiring a school employee to refrain from reporting a crime witnessed at the school or to report a crime witnessed at the school only to certain persons or peace officers. <i>Education Code 37.148</i></p>
<b>Protection for Reporting Child Abuse</b>	<p>A board or its agents may not suspend or terminate the employment of, or otherwise discriminate against, a professional employee who in good faith:</p> <ol style="list-style-type: none"><li>1. Reports child abuse or neglect to:<ol style="list-style-type: none"><li>a. The person's supervisor,</li><li>b. An administrator of the facility where the person is employed,</li><li>c. A state regulatory agency, or</li><li>d. A law enforcement agency; or</li></ol></li><li>2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.</li></ol> <p>A person whose employment is suspended or terminated or who is otherwise discriminated against in violation of the foregoing may sue for injunctive relief, damages, or both. A district employee who has a cause of action under Whistleblower Protection may not bring an action under Protection for Reporting Child Abuse.</p> <p><i>Family Code 261.110</i></p>
<b>Protection from Disciplinary Proceedings</b>	<p>For purposes of the following provisions, "disciplinary proceeding" means discharge or suspension of a professional employee, or termination or nonrenewal of a professional employee's term contract. [See DGC regarding immunity] <i>Education Code 22.0512(b)</i></p>

EMPLOYEE RIGHTS AND PRIVILEGES

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Reporting Child Abuse or Maltreatment	A district employee may not be subject to any disciplinary proceeding resulting from an action taken in compliance with Education Code 38.0041 [prevention of child abuse and other maltreatment, see FFG]. <i>Education Code 38.0041</i>
Use of Physical Force	<p>A professional employee may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Penal Code 9.62. This provision does not prohibit a district from enforcing a policy relating to corporal punishment or bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment. <i>Education Code 22.0512(a)</i>; <i>Tex. Att'y Gen. Op. GA-0202 (2004)</i></p> <p>Penal Code 9.62 provides that the use of force, other than deadly force, against a person is justified:</p> <ol style="list-style-type: none"><li>1. If the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and</li><li>2. When and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.</li></ol>
<b>Instructional Materials and Technological Equipment</b>	A board may not require an employee who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. An employee may not waive this provision by contract or any other means.
Exception	<p>A district may enter into a written agreement with an employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the employee to use the electronic instructional material or technological equipment for personal business.</p> <p>The written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to enter into such an agreement as a condition of employment.</p> <p><i>Education Code 31.104(e); 19 TAC 66.107(c)</i></p>
<b>Breaks for Nursing Mothers—Nonexempt Employees</b>	A district shall provide a nonexempt employee a reasonable break to express breast milk, each time the employee needs to express breast milk for her nursing child, for one year after the child's birth. The district shall provide a place, other than a bathroom, that is

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shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

A district is not required to compensate the employee receiving reasonable break time for any work time spent for such purpose.

A district that employs fewer than 50 employees is not subject to these requirements if the requirements would impose an undue hardship by causing the district significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the district.

*29 U.S.C. 207(r)*

**Right to Express  
Breast Milk**

A district employee is entitled to express breast milk at the employee's workplace. *Gov't Code 619.002*

The district shall develop a written policy on the expression of breast milk by employees under Government Code Chapter 619. The policy must state that the district shall support the practice of expressing breast milk and make reasonable accommodations for the needs of employees who express breast milk.

A district shall provide a reasonable amount of break time for an employee to express breast milk each time the employee has need to express the milk. The district shall provide a place, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk.

A district may not suspend or terminate the employment of, or otherwise discriminate against, an employee because the employee has asserted the employee's rights under Government Code Chapter 619. Government Code Chapter 619 does not create a private or state cause of action against a district.

*Gov't Code Ch. 619*

**Charitable  
Contributions**

A board or a district employee may not directly or indirectly require or coerce any district employee to:

1. Make a contribution to a charitable organization or in response to a fund-raiser; or
2. Attend a meeting called for the purpose of soliciting charitable contributions.

A board or district employee may not directly or indirectly require or coerce any district employee to refrain from the same acts.

*Education Code 22.011*

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**Protection of Nurses**

A district may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission relating to patient care that:

1. Would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I;
2. Constitutes a minor incident, as defined at Occupations Code 301.419; or
3. Would violate Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners, if the nurse notifies the district at the time of the refusal that this is the reason for refusing to engage in the act or omission.

*Occupations Code 301.352(a)*

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**United States  
Constitution**

The District shall take no action abridging the freedom of speech or the right of the people to petition the Board for redress of grievances. *U.S. Const. Amend. I, XIV*

The Board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when the Board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995); *City of Madison v. Wis. Emp. Rel. Comm'n*, 429 U.S. 167, 174 (1976); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968) [See DG]

**Texas Constitution**

Employees shall have the right, in a peaceable manner, to assemble together for their common good and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance. *Tex. Const. Art. I, Sec. 27*

There is no requirement that the Board negotiate or even respond to complaints. However, the Board must stop, look, and listen and must consider the petition, address, or remonstrance. *Prof'l Ass'n of College Educators v. El Paso County Cmty. [College] District*, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref'd n.r.e.)

**Federal Laws**

Section 504

A district that receives federal financial assistance, directly or indirectly, and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973. *34 C.F.R. 104.7(b)*, . 11

Americans with  
Disabilities Act

A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Code of Federal Regulations, Title 28, Part 35 (Americans with Disabilities Act regulations). *28 C.F.R. 35.107*, . 140

Title IX

A district that receives federal financial assistance, directly or indirectly, shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 C.F.R. 106.8(b)*; *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512 (1982)

**State Laws**

Wages, Hours,  
Conditions of Work

The prohibition against collective bargaining and strikes [see DGA] does not impair the right of employees to present grievances concerning their wages, hours of employment, or conditions of work,

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either individually or through a representative that does not claim the right to strike. *Gov't Code 617.005*

The term "conditions of work" should be construed broadly to include any area of wages, hours or conditions of employment, and any other matter that is appropriate for communications from employees to employer concerning an aspect of their relationship. *Atty. Gen. Op. JM-177 (1984)*; *Corpus Christi Fed. of Teachers v. Corpus Christi Indep. Sch. Dist.*, 572 S.W.2d 663 (Tex. 1978)

The statute protects grievances presented individually or individual grievances presented collectively. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.)

Representative

The District cannot deny an employee's representative, including an attorney, the right to represent the employee at any stage of the grievance procedure, so long as the employee designates the representative and the representative does not claim the right to strike. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.); *Sayre v. Mullins*, 681 S.W.2d 25 (Tex. 1984)

The District should meet with employees or their designated representatives at reasonable times and places to hear grievances concerning wages, hours of work, and conditions of work. The right to present grievances is satisfied if employees have access to those in a position of authority to air their grievances. However, that authority is under no legal compulsion to take action to rectify the matter. *Atty. Gen. Op. H-422 (1974)*; *Corpus Christi Indep. Sch. Dist. v. Padilla*, 709 S.W.2d 700 (Tex. App.—Corpus Christi, 1986, no writ)

Employment Policy

The District's employment policy must provide each employee with the right to present grievances to the Board.

The policy may not restrict the ability of an employee to communicate directly with a member of the Board regarding a matter relating to the operation of the District, except that the policy may prohibit ex parte communication relating to:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and
2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the Board.

*Education Code 11.1513*

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Grievance Policy	<p>The District's grievance policy must permit an employee to report a grievance against a supervisor to a different supervisor if the employee alleges that the supervisor:</p> <ol style="list-style-type: none"><li>1. Violated the law in the workplace; or</li><li>2. Unlawfully harassed the employee.</li></ol>
Telephone Representation	<p>If the District's grievance policy provides for representation, the policy must permit an employee's representative to represent the employee through a telephone conference call at any formal grievance proceeding, hearing, or conference at which the employee is entitled to representation according to the policy. This provision applies to grievances under Education Code 11.171(a) and only if the District has the equipment necessary for a telephone conference call.</p> <p><i>Education Code 11.171(a), (c)</i></p>
Audio Recording	<p>The District's grievance policy must permit an employee who reports a grievance to make an audio recording of any meeting or proceeding at which the substance of a grievance that complies with the policy is investigated or discussed. The implementation of an employee's authorization to make an audio recording may not result in a delay of any time line provided by the grievance policy. The District is not required to provide equipment for the employee to make the recording. <i>Education Code 11.171(b)</i></p>
Finality of Grades	<p>An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with the District's grading policy applicable to the grade, as determined by the Board.</p> <p>The Board's determination is not subject to appeal.</p> <p><i>Education Code 28.0214</i></p>
Open Meetings Act	<p>The Board is not required to conduct an open meeting to hear a complaint or charge against an employee. However, the Board may not conduct a closed meeting if the employee who is the subject of the hearing requests a public hearing. <i>Gov't Code 551.074</i> [See BEC]</p>
Closed Meeting	<p>The Board may conduct a closed meeting on an employee complaint to the extent required or provided by law. <i>Gov't Code 551.082</i> [See BEC]</p>
Record of Proceedings	<p>An appeal of the Board's decision to the Commissioner shall be decided based on a review of the record developed at the District level. "Record" includes, at a minimum, an audible electronic</p>

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recording or written transcript of all oral testimony or argument.

*Education Code 7.057(c), (f)*

It is the District's responsibility to make and preserve the records of the proceedings before the Board. If the District fails to create and preserve the record without good cause, all substantial evidence issues that require missing portions of the record for resolution shall be deemed against the District. The record shall include:

1. A tape recording or a transcript of the hearing at the local level. If a tape recording is used:
  - a. The tape recording must be complete, audible, and clear; and
  - b. Each speaker must be clearly identified.
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the decision of the hearing examiner;
7. A tape recording or transcript of the oral argument before the Board; and
8. The decision of the Board.

*19 TAC 157.1073(d)*

**Whistleblower  
Complaints**

Before bringing suit, an employee who seeks relief under Government Code Chapter 554 (whistleblowers) must initiate action under the District's grievance or appeal procedures relating to suspension or termination of employment or adverse personnel action.  
*Gov't Code 554.006 [See DG]*

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**Complaints**

In this policy, the terms “complaint” and “grievance” shall have the same meaning.

**Other Complaint  
Processes**

Employee complaints shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with DGBA after the relevant complaint process:

1. Complaints alleging discrimination, including violations of Title IX (gender), Title VII (sex, race, color, religion, national origin), ADEA (age), or Section 504 (disability), shall be submitted in accordance with DIA.
2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violation of Title VII, shall be submitted in accordance with DIA.
3. Complaints concerning retaliation relating to discrimination and harassment shall be submitted in accordance with DIA.
4. Complaints concerning instructional resources shall be submitted in accordance with EF.
5. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with CKE.
6. Complaints concerning the proposed nonrenewal of a term contract issued under Chapter 21 of the Education Code shall be submitted in accordance with DFBB.
7. Complaints concerning the proposed termination or suspension without pay of an employee on a probationary, term, or continuing contract issued under Chapter 21 of the Education Code during the contract term shall be submitted in accordance with DFAA, DFBA, or DFCA.

**Notice to Employees**

The District shall inform employees of this policy through appropriate District publications.

**Guiding Principles**

**Informal Process**

The Board encourages employees to discuss their concerns with their supervisor, principal, or other appropriate administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

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Direct Communication with Board Members	Employees shall not be prohibited from communicating with a member of the Board regarding District operations except when communication between an employee and a Board member would be inappropriate because of a pending hearing or appeal related to the employee.
Formal Process	<p>An employee may initiate the formal process described below by timely filing a written complaint form.</p> <p>Even after initiating the formal complaint process, employees are encouraged to seek informal resolution of their concerns. An employee whose concerns are resolved may withdraw a formal complaint at any time.</p> <p>The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or "mini-trial" at any level.</p>
<b>Freedom from Retaliation</b>	Neither the Board nor any District employee shall unlawfully retaliate against an employee for bringing a concern or complaint.
<b>Whistleblower Complaints</b>	<p>Whistleblower complaints shall be filed within the time specified by law and may be made to the Superintendent or designee beginning at Level Two. Time lines for the employee and the District set out in this policy may be shortened to allow the Board to make a final decision within 60 calendar days of the initiation of the complaint.</p> <p>[See DG]</p>
<b>Complaints Against Supervisors</b>	Complaints alleging a violation of law by a supervisor may be made to the Superintendent or designee. Complaint forms alleging a violation of law by the Superintendent may be submitted directly to the Board or designee.
<b>General Provisions</b> Filing	Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, including e-mail and fax, or by U.S. Mail. Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on the deadline. Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are post-marked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three days after the deadline.
Scheduling Conferences	The District shall make reasonable attempts to schedule conferences at a mutually agreeable time. If the employee fails to appear at a scheduled conference, the District may hold the conference and issue a decision in the employee's absence.

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Response	<p>At Levels One and Two, “response” shall mean a written communication to the employee from the appropriate administrator. Responses may be hand-delivered, sent by electronic communication to the employee’s e-mail address of record, or sent by U.S. Mail to the employee’s mailing address of record. Mailed responses shall be timely if they are postmarked by U.S. Mail on or before the deadline.</p>
Days	<p>“Days” shall mean District business days, unless otherwise noted. In calculating time lines under this policy, the day a document is filed is “day zero.” The following business day is “day one.”</p>
Representative	<p>“Representative” shall mean any person who or an organization that does not claim the right to strike and is designated by the employee to represent him or her in the complaint process.</p> <p>The employee may designate a representative through written notice to the District at any level of this process. If the employee designates a representative with fewer than three days’ notice to the District before a scheduled conference or hearing, the District may reschedule the conference or hearing to a later date, if desired, in order to include the District’s counsel. The District may be represented by counsel at any level of the process.</p> <p>For a grievance alleging a violation of law by a supervisor, the employee’s representative may participate in person or by telephone conference call.</p>
Consolidating Complaints	<p>Complaints arising out of an event or a series of related events shall be addressed in one complaint. Employees shall not file separate or serial complaints arising from any event or series of events that have been or could have been addressed in a previous complaint.</p> <p>When two or more complaints are sufficiently similar in nature and remedy sought to permit their resolution through one proceeding, the District may consolidate the complaints.</p>
Untimely Filings	<p>All time limits shall be strictly followed unless modified by mutual written consent.</p> <p>If a complaint form or appeal notice is not timely filed, the complaint may be dismissed, on written notice to the employee, at any point during the complaint process. The employee may appeal the dismissal by seeking review in writing within ten days from the date of the written dismissal notice, starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of timeliness.</p>

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Costs Incurred	Each party shall pay its own costs incurred in the course of the complaint.
Complaint and Appeal Forms	<p>Complaints and appeals under this policy shall be submitted in writing on a form provided by the District.</p> <p>Copies of any documents that support the complaint should be attached to the complaint form. If the employee does not have copies of these documents, they may be presented at the Level One conference. After the Level One conference, no new documents may be submitted by the employee unless the employee did not know the documents existed before the Level One conference.</p> <p>A complaint or appeal form that is incomplete in any material aspect may be dismissed but may be refiled with all the required information if the refiling is within the designated time for filing.</p>
Audio Recording	As provided by law, an employee shall be permitted to make an audio recording of a conference or hearing under this policy at which the substance of the employee's complaint is discussed. The employee shall notify all attendees present that an audio recording is taking place.
<b>Level One</b>	<p>Complaint forms must be filed:</p> <ol style="list-style-type: none"><li>1. Within 15 days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance; and</li><li>2. With the lowest level administrator who has the authority to remedy the alleged problem.</li></ol> <p>In most circumstances, employees on a school campus shall file Level One complaints with the campus principal; other District employees shall file Level One complaints with their immediate supervisor.</p> <p>If the only administrator who has authority to remedy the alleged problem is the Superintendent or designee, the complaint may begin at Level Two following the procedure, including deadlines, for filing the complaint form at Level One.</p> <p>If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.</p> <p>The appropriate administrator shall investigate as necessary and schedule a conference with the employee within ten days after receipt of the written complaint. The administrator may set reasonable time limits for the conference.</p>

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Absent extenuating circumstances, the administrator shall provide the employee a written response within ten days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the administrator may consider information provided at the Level One conference and any other relevant documents or information the administrator believes will help resolve the complaint.

**Level Two**

If the employee did not receive the relief requested at Level One or if the time for a response has expired, the employee may request a conference with the Superintendent or designee to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level One response or, if no response was received, within ten days of the Level One response deadline.

After receiving notice of the appeal, the Level One administrator shall prepare and forward a record of the Level One complaint to the Level Two administrator. The employee may request a copy of the Level One record.

The Level One record shall include:

1. The original complaint form and any attachments.
2. All other documents submitted by the employee at Level One.
3. The written response issued at Level One and any attachments.
4. All other documents relied upon by the Level One administrator in reaching the Level One decision.

The Superintendent or designee shall schedule a conference within ten days after the appeal notice is filed. The conference shall be limited to the issues and documents considered at Level One. At the conference, the employee may provide information concerning any documents or information relied upon by the administration for the Level One decision. The Superintendent or designee may set reasonable time limits for the conference.

The Superintendent or designee shall provide the employee a written response within ten days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the Superintendent or designee may consider the Level One record, information provided at the Level Two conference, and any other relevant documents or information the Superintendent or designee believes will help resolve the complaint.

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Recordings of the Level One and Level Two conferences, if any, shall be maintained with the Level One and Level Two records.

**Level Three**

If the employee did not receive the relief requested at Level Two or if the time for a response has expired, the employee may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level Two response or, if no response was received, within ten days of the Level Two response deadline.

The Superintendent or designee shall inform the employee of the date, time, and place of the Board meeting at which the complaint will be on the agenda for presentation to the Board.

The Superintendent or designee shall provide the Board the record of the Level Two appeal. The employee may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The notice of appeal from Level One to Level Two.
3. The written response issued at Level Two and any attachments.
4. All other documents relied upon by the administration in reaching the Level Two decision.

The appeal shall be limited to the issues and documents considered at Level Two, except that if at the Level Three hearing the administration intends to rely on evidence not included in the Level Two record, the administration shall provide the employee notice of the nature of the evidence at least three days before the hearing.

The District shall determine whether the complaint will be presented in open or closed meeting in accordance with the Texas Open Meetings Act and other applicable law. [See BE]

The presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the employee and administration to each make a presentation and provide rebuttal and an opportunity for questioning by the Board. The Board shall hear the complaint and may request that the administration provide an explanation for the decisions at the preceding levels.

In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of the Level Three presentation. The Level Three presentation, including the presenta-

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tion by the employee or the employee's representative, any presentation from the administration, and questions from the Board with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board shall then consider the complaint. It may give notice of its decision orally or in writing at any time up to and including the next regularly scheduled Board meeting. If the Board does not make a decision regarding the complaint by the end of the next regularly scheduled meeting, the lack of a response by the Board upholds the administrative decision at Level Two.

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**Educator Ethics**

Educators shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom.

The State Board for Educator Certification (SBEC) shall provide for the adoption, amendment, and enforcement of an educator's code of ethics [see DH(EXHIBIT)]. SBEC is solely responsible for enforcing the ethics code for purposes related to certification disciplinary proceedings.

*Education Code 21.041(b)(8); 19 TAC 247.1(b), (c)*

**Public Servants**

All district employees are "public servants" and therefore subject to Title VIII of the Penal Code, regarding offenses against public administration, including restrictions on the acceptance of illegal gifts, honoraria and expenses, and abuse of office. *Penal Code 1.07(a)(41), Title VIII* [See DBD and BBFA]

**Electronic  
Communication  
Policy**

"Electronic communication" means any communication facilitated by the use of any electronic device, including a telephone, cellular telephone, computer, computer network, personal data assistant, or pager. The term includes e-mails, text messages, instant messages, and any communications made through a website, including a social media website or a social networking website.

A school district shall adopt a written policy concerning electronic communications between a school employee and a student enrolled in the district.

The policy adopted under this section must:

1. Include provisions designed to prevent improper electronic communications between a school employee and a student;
2. Allow a school employee to elect to not disclose to students the employee's personal telephone number or e-mail address; and
3. Include provisions instructing a school employee about the proper method for notifying appropriate local administrators about an incident in which a student engages in improper communications with the school employee.

*Education Code 38.027*

**Ineligible for  
Retirement Annuity**

A person is not eligible to receive a service retirement annuity from the Teacher Retirement System (TRS) if the person is convicted of a qualifying felony and the victim is a student.

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"Qualifying felony" means an offense that is punishable as a felony under the following sections of the Penal Code:

1. Section 21.02 (continuous sexual abuse of young child or children);
2. Section 21.12 (improper relationship between educator and student); or
3. Section 22.011 (sexual assault) or Section 22.021 (aggravated sexual assault).

The term includes any federal offense that contains elements that are substantially similar to the elements of a felony offense described above.

Not later than the 30th day after the date of a person's conviction for a qualifying felony, the school at which the person was employed shall provide written notice of the conviction to TRS. The notice must comply with rules adopted by TRS.

*Gov't Code 824.009*

**Transportation or  
Storage of Firearm in  
School Parking Area**

A district may not prohibit a school employee who holds a license to carry a handgun under Government Code, Chapter 411, Subchapter H, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the district, provided that the handgun, firearm, or ammunition is not in plain view.

This does not authorize a person to possess, transport, or store a handgun, a firearm, or ammunition in violation of Education Code 37.125 or Penal Code 46.03 or 46.035, or other law. [See GKA]

*Education Code 37.0815*

**Tobacco and  
E-Cigarettes**

A board shall prohibit smoking or using e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property.

Enforcement

A board shall ensure that district personnel enforce the policies on school property.

*Education Code 38.006(b)* [See also FNCD and GKA]

**Drug and Alcohol  
Abuse Program**

A board shall prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property.

*Education Code 38.007(a)*

Federal Drug-Free  
Workplace Act

A district that receives a direct federal grant must agree to provide a drug-free workplace by:

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1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the district's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
2. Establishing a drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in the workplace;
  - b. The district's policy of maintaining a drug-free workplace;
  - c. Available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that may be imposed on employees for drug abuse violations;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the required statement;
4. Notifying the employee in the required statement that as a condition of employment in the grant the employee will:
  - a. Abide by the terms of the statement; and
  - b. Notify the district of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;
5. Notifying the granting agency within 10 days after receiving notice from an employee or otherwise receiving actual notice of a conviction;
6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by 41 U.S.C. section 8104; and
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the above requirements.

*41 U.S.C. 8103(a)(1)*

**Dietary Supplements**

Except as provided at Education Code 38.011(b), a district employee may not:

1. Knowingly sell, market, or distribute a dietary supplement that contains performance-enhancing compounds to a primary or

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secondary education student with whom the employee has contact as part of the employee's duties; or

2. Knowingly endorse or suggest the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance-enhancing compounds by a primary or secondary student with whom the employee has contact as part of the employee's duties.

An employee who violates items 1 or 2, above, commits a Class C misdemeanor offense.

*Education Code 38.011*

**Low-THC Cannabis**

A district may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the possession of low-THC cannabis, as authorized by Health and Safety Code Chapter 487. *Health and Safety Code 487.201*

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Each District employee shall perform his or her duties in accordance with state and federal law, District policy, and ethical standards. The District holds all employees accountable to the Educators' Code of Ethics. [See DH(EXHIBIT)]

Each District employee shall recognize and respect the rights of students, parents, other employees, and members of the community and shall work cooperatively with others to serve the best interests of the District.

An employee wishing to express concern, complaints, or criticism shall do so through appropriate channels. [See DGBA]

**Violations of  
Standards of  
Conduct**

Each employee shall comply with the standards of conduct set out in this policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to his or her status as a District employee. Violation of any policies, regulations, or guidelines, including intentionally making a false claim, offering a false statement, or refusing to cooperate with a District investigation, may result in disciplinary action, including termination of employment. [See DCD and DF series]

**Weapons Prohibited**

The District prohibits the use, possession, or display of any firearm, location-restricted knife, club, or prohibited weapon, as defined at FNCG, on District property at all times.

**Exceptions**

No violation of this policy occurs when:

1. Use or possession of a firearm by a specific employee is authorized by Board action. [See CKC]
2. A District employee who holds a Texas handgun license stores a handgun or other firearm in a locked vehicle in a parking lot, parking garage, or other parking area provided by the District, provided the handgun or other firearm is not loaded and not in plain view; or
3. The use, possession, or display of an otherwise prohibited weapon takes place as part of a District-approved activity supervised by proper authorities. [See FOD]

**Electronic  
Communication**

**Use with Students**

A certified employee, licensed employee, or any other employee may use electronic communication, as this term is defined by law, with currently enrolled students only about matters within the scope of the employee's professional responsibilities.

Unless an exception has been made in accordance with the employee handbook or other administrative regulations, an employee shall not use a personal electronic communication platform, application, or account to communicate with currently enrolled students.

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Unless authorized above, all other employees are prohibited from using electronic communication directly with students who are currently enrolled in the District. The employee handbook or other administrative regulations shall further detail:

1. Exceptions for family and social relationships;
2. The circumstances under which an employee may use text messaging to communicate with individual students or student groups;
3. Hours of the day during which electronic communication is discouraged or prohibited; and
4. Other matters deemed appropriate by the Superintendent or designee.

In accordance with ethical standards applicable to all District employees [see DH(EXHIBIT)], an employee shall be prohibited from using electronic communications in a manner that constitutes prohibited harassment or abuse of a District student; adversely affects the student's learning, mental health, or safety; includes threats of violence against the student; reveals confidential information about the student; or constitutes an inappropriate communication with a student, as described in the Educators' Code of Ethics.

An employee shall have no expectation of privacy in electronic communications with students. Each employee shall comply with the District's requirements for records retention and destruction to the extent those requirements apply to electronic communication. [See CPC]

### *Text Messaging*

Only a teacher, trainer, or other employee who has an extracurricular duty may use text messaging and then only to communicate with students who participate in the extracurricular activity over which the employee has responsibility.

An employee who communicates through text messaging shall be required to include at least one of the student's parents or guardians as a recipient so that the student and parent receive the same message. As an alternative to sending a message to the student's parent, the employee may send a copy of the message to his or her own District email address in order to retain a printable record if the employee has a device that provides this capability.

### *Personal Use*

All employees shall be held to the same professional standards in their public use of electronic communication as for any other public conduct. If an employee's use of electronic communication violates state or federal law or District policy, or interferes with the em-

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employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment.

**Reporting Improper Communication**

In accordance with administrative regulations, an employee shall notify his or her supervisor when a student engages in improper electronic communication with the employee.

**Disclosing Personal Information**

An employee shall not be required to disclose his or her personal email address or personal phone number to a student.

**Safety Requirements**

Each employee shall adhere to District safety rules and regulations and shall report unsafe conditions or practices to the appropriate supervisor.

**Harassment or Abuse**

An employee shall not engage in prohibited harassment, including sexual harassment, of:

1. Other employees. [See DIA]
2. Students. [See FFH; see FFG regarding child abuse and neglect.]

While acting in the course of employment, an employee shall not engage in prohibited harassment, including sexual harassment, of other persons, including Board members, vendors, contractors, volunteers, or parents.

An employee shall report child abuse or neglect as required by law. [See FFG]

**Relationships with Students**

An employee shall not form romantic or other inappropriate social relationships with students. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See FFH]

As required by law, the District shall notify the parent of a student with whom an educator is alleged to have engaged in certain misconduct. [See FFF]

**Tobacco and E-Cigarettes**

An employee shall not smoke or use tobacco products or e-cigarettes on District property, in District vehicles, or at school-related activities. [See also GKA]

**Alcohol and Drugs / Notice of Drug-Free Workplace**

As a condition of employment, an employee shall abide by the terms of the following drug-free workplace provisions. An employee shall notify the Superintendent in writing if the employee is convicted for a violation of a criminal drug statute occurring in the workplace in accordance with Arrests, Indictments, Convictions, and Other Adjudications, below.

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An employee shall not manufacture, distribute, dispense, possess, use, or be under the influence of any of the following substances during working hours while on District property or at school-related activities during or outside of usual working hours:

1. Any controlled substance or dangerous drug as defined by law, including but not limited to marijuana, any narcotic drug, hallucinogen, stimulant, depressant, amphetamine, or barbiturate.
2. Alcohol or any alcoholic beverage.
3. Any abusable glue, aerosol paint, or any other chemical substance for inhalation.
4. Any other intoxicant or mood-changing, mind-altering, or behavior-altering drug.

An employee need not be legally intoxicated to be considered "under the influence" of a controlled substance.

Exceptions

It shall not be considered a violation of this policy if the employee:

1. Manufactures, possesses, or dispenses a substance listed above as part of the employee's job responsibilities;
2. Uses or possesses a controlled substance or drug authorized by a licensed physician prescribed for the employee's personal use; or
3. Possesses a controlled substance or drug that a licensed physician has prescribed for the employee's child or other individual for whom the employee is a legal guardian.

Sanctions

An employee who violates these drug-free workplace provisions shall be subject to disciplinary sanctions. Sanctions may include:

1. Referral to drug and alcohol counseling or rehabilitation programs;
2. Referral to employee assistance programs;
3. Termination from employment with the District; and
4. Referral to appropriate law enforcement officials for prosecution.

Notice

Employees shall receive a copy of this policy.

**Arrests, Indictments,  
Convictions, and  
Other Adjudications**

An employee shall notify his or her principal or immediate supervisor within three calendar days of any arrest, indictment, conviction, no contest or guilty plea, or other adjudication of the employee for

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any felony, any offense involving moral turpitude, and any of the other offenses as indicated below:

1. Crimes involving school property or funds;
2. Crimes involving attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
3. Crimes that occur wholly or in part on school property or at a school-sponsored activity; or
4. Crimes involving moral turpitude, which include:
  - Dishonesty; fraud; deceit; theft; misrepresentation;
  - Deliberate violence;
  - Base, vile, or depraved acts that are intended to arouse or gratify the sexual desire of the actor;
  - Felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in Chapter 481 of the Health and Safety Code;
  - Acts constituting public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct; or
  - Acts constituting abuse or neglect under the Texas Family Code.

**Dress and Grooming**

An employee's dress and grooming shall be clean, neat, in a manner appropriate for his or her assignment, and in accordance with any additional standards established by his or her supervisor and approved by the Superintendent.

## **Educators' Code of Ethics**

The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. *19 TAC 247.1*

### **Professional Ethical Conduct, Practices, and Performance**

Standard 1.1. The educator shall not intentionally, knowingly, or recklessly engage in deceptive practices regarding official policies of the school district, educational institution, educator preparation program, the Texas Education Agency, or the State Board for Educator Certification (SBEC) and its certification process.

Standard 1.2. The educator shall not intentionally, knowingly, or recklessly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.

Standard 1.3. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.

Standard 1.4. The educator shall not use institutional or professional privileges for personal or partisan advantage.

Standard 1.5. The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or that are used to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.

Standard 1.6. The educator shall not falsify records, or direct or coerce others to do so.

Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws.

Standard 1.8. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.

Standard 1.9. The educator shall not make threats of violence against school district employees, school board members, students, or parents of students.

Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.

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Standard 1.11. The educator shall not intentionally or knowingly misrepresent his or her employment history, criminal history, and/or disciplinary record when applying for subsequent employment.

Standard 1.12. The educator shall refrain from the illegal use, abuse, or distribution of controlled substances, prescription drugs, and toxic inhalants.

Standard 1.13. The educator shall not be under the influence of alcohol or consume alcoholic beverages on school property or during school activities when students are present.

**Ethical Conduct Toward Professional Colleagues**

Standard 2.1. The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.

Standard 2.2. The educator shall not harm others by knowingly making false statements about a colleague or the school system.

Standard 2.3. The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.

Standard 2.4. The educator shall not interfere with a colleague's exercise of political, professional, or citizenship rights and responsibilities.

Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.

Standard 2.6. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.

Standard 2.7. The educator shall not retaliate against any individual who has filed a complaint with the SBEC or who provides information for a disciplinary investigation or proceeding under this chapter.

Standard 2.8. The educator shall not intentionally or knowingly subject a colleague to sexual harassment.

**Ethical Conduct Toward Students**

Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

Standard 3.2. The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.

Standard 3.3. The educator shall not intentionally, knowingly, or recklessly misrepresent facts regarding a student.

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Standard 3.4. The educator shall not 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, gender, disability, national origin, religion, family status, or sexual orientation.

Standard 3.5. The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.

Standard 3.6. The educator shall not solicit or engage in sexual conduct or a romantic relationship with a student or minor.

Standard 3.7. The educator shall not furnish alcohol or illegal/unauthorized drugs to any person under 21 years of age unless the educator is a parent or guardian of that child or knowingly allow any person under 21 years of age unless the educator is a parent or guardian of that child to consume alcohol or illegal/unauthorized drugs in the presence of the educator.

Standard 3.8. The educator shall maintain appropriate professional educator-student relationships and boundaries based on a reasonably prudent educator standard.

Standard 3.9. The educator shall refrain from inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

1. The nature, purpose, timing, and amount of the communication;
2. The subject matter of the communication;
3. Whether the communication was made openly or the educator attempted to conceal the communication;
4. Whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;
5. Whether the communication was sexually explicit; and
6. Whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

19 TAC 247.2

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**Note:** This policy applies to a district of innovation under Education Code, Chapter 12A. [See AF]

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**Permissive Reports**

The superintendent may notify the State Board for Educator Certification (SBEC) of any educator misconduct that he or she believes in good faith may be subject to sanctions under 19 Administrative Code, Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, and/or Chapter 247, Educators' Code of Ethics. 19 TAC 249.14(d)

**Required Reports**

A superintendent shall notify SBEC if:

1. An educator employed by or seeking employment with the district, or an applicant or holder of an SBEC certificate, has a criminal record and the district obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established by the Texas Department of Public Safety under Government Code 411.0845;
2. An educator's employment at the district was terminated and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct, below];
3. The educator submitted a notice of resignation and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct, below]; or
4. The educator engaged in conduct that violated the assessment instrument security procedures established under Education Code 39.0301.

*Education Code 21.006, 22.087; 19 TAC 249.14(d)*

**Reportable  
Misconduct**

A superintendent shall make a report to SBEC under items 2 and 3, above, if an educator was terminated or resigned and there is evidence that the educator:

1. Sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;
2. Possessed, transferred, sold, or distributed a controlled substance, as defined by Health and Safety Code Chapter 481 or by 21 U.S.C. 801 et seq.;
3. Illegally transferred, appropriated, or expended school property or funds;
4. Attempted by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle the individual

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to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

5. Committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or
6. Solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

*Education Code 21.006(b); 19 TAC 249.14(d)*

**Investigation**

A superintendent shall complete an investigation of an educator that involves evidence that the educator may have engaged in misconduct described above at Reportable Misconduct, items 1 and 2, despite the educator's resignation from employment before completion of the investigation. *Education Code 21.006(b-1); 19 TAC 249.14(d)(3)(C)*

**Deadline to Report**

The superintendent shall promptly notify SBEC in writing by filing a report within seven business days after the date the superintendent receives a report from a principal [see DP(LEGAL)] or knew of the circumstances described above. *Education Code 21.006(c); 19 TAC 249.14(d)* [See Required Reports, above]

**Contents of Report**

The report must be in writing and in a form prescribed by SBEC. The report shall include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator and the factual circumstances requiring the report and the subject of the report by providing the following available information:

1. Name and any aliases;
2. Certificate number, if any, or social security number;
3. Last known mailing address and home and daytime phone numbers;
4. All available contact information for any alleged victim or victims;
5. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
6. Current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
7. Involvement by a law enforcement or other agency, including the name of the agency.

*Education Code 21.006(c-1); 19 TAC 249.14(f)*

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	The name of the student or minor is not public information under the Public Information Act. [See GBAA] <i>Education Code 21.006(h)</i>
<b>Notice</b>	
To the Board and Educator	A superintendent shall notify the board and the educator of the filing of a written report with SBEC. The superintendent shall notify the board before filing the report. <i>Education Code 21.006(d); 19 TAC 249.14(d)(3)(B)</i>
Before Accepting Resignation	Before accepting an employee's resignation that requires filing a report, the superintendent shall inform the educator in writing that a report will be filed and that sanctions against his or her certificate may result as a consequence. <i>19 TAC 249.14(d)(3)(A)</i>
<b>Policy to Notify Parents</b>	The board shall adopt a policy under which notice is provided to the parent or guardian of a student with whom an educator is alleged to have abused or otherwise committed an unlawful act with a student or minor. [See FFF] <i>Education Code 21.0061</i>
<b>Sanctions for Failure to Report</b>	SBEC shall determine whether to impose sanctions, including an administrative penalty against a superintendent who fails to file a report. <i>Education Code 21.006(f); 19 TAC 249.14(d), (h), .15(b)(4)</i>
Administrative Penalty	If a superintendent is required to file a report and fails to file the report by the required date, SBEC may impose an administrative penalty of not less than \$500 and not more than \$10,000. SBEC may not renew the certification of an educator against whom an administrative penalty is imposed until the penalty is paid. <i>Education Code 21.006(i)</i>
<b>Criminal Offense</b>	A superintendent required to file a report commits a state jail felony if the superintendent fails to file the report by the required date with intent to conceal an educator's criminal record or alleged incident of misconduct. <i>Education Code 21.006(j)</i>
<b>Immunity</b>	A superintendent or principal who, in good faith and while acting in an official capacity, files a report with SBEC or communicates with another superintendent or principal concerning an educator's criminal record or alleged incident of misconduct is immune from civil or criminal liability that might otherwise be incurred or imposed. <i>Education Code 21.006(e)</i>
<b>Definitions</b>	"Abuse" includes the following acts or omissions:
"Abuse"	<ol style="list-style-type: none"><li>1. Mental or emotional injury to a student or minor that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;</li><li>2. Causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in</li></ol>

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the student's or minor's development, learning, or psychological functioning;

3. Physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or
4. Sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare.

*19 TAC 249.3(1)*

"Reported Criminal History"

"Reported criminal history" means information concerning any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, criminal informations, convictions, deferred adjudications, and probations in any state or federal jurisdiction. *19 TAC 249.3(44)*

"Solicitation of a Romantic Relationship"

"Solicitation of a romantic relationship" means deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or patterns of exclusivity, but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:

1. Behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior include:
  - a. The nature of the communications;
  - b. The timing of the communications;
  - c. The extent of the communications;
  - d. Whether the communications were made openly or secretly;
  - e. The extent that the educator attempts to conceal the communications;

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- f. If the educator claims to be counseling a student, SBEC may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and
  - g. Any other evidence tending to show the context of the communications between educator and student.
- 2. Making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images.
- 3. Making sexually demeaning comments to a student.
- 4. Making comments about a student's potential sexual performance.
- 5. Requesting details of a student's sexual history.
- 6. Requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator.
- 7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party.
- 8. Inappropriate hugging, kissing, or excessive touching.
- 9. Providing the student with drugs or alcohol.
- 10. Violating written directives from school administrators regarding the educator's behavior toward a student.
- 11. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage.
- 12. Any other acts tending to show that the educator solicited a romantic relationship with the student.

*19 TAC 249.3(51)*

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SEARCHES AND ALCOHOL/DRUG TESTING

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**Searches—General Rule**

Citizens, including district employees, have a right to be free from unreasonable searches and seizures. *U.S. Const. Amendment IV*; *Tex. Const. Art. I, Sec. 9*

A district may search an employee or an employee's property if:

1. There are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct; and
2. The search is reasonably related in scope to the circumstances that justified the interference in the first place.

*O'Connor v. Ortega*, 480 U.S. 709 (1987); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

In addition, a district may search an employee's workplace for non-investigatory, work-related purposes, if there are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct. *O'Connor v. Ortega*, 480 U.S. 709 (1987)

**Drug/Alcohol Testing**

Blood, urine, and breath tests of public employees to determine drug use are searches under the Fourth Amendment of the U.S. Constitution. *Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602 (1989)

**Random Drug Testing**

A district may conduct drug tests, without a warrant and without individualized suspicion, when the test serves special governmental needs that outweigh the individual's privacy expectation. *Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602 (1989); *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989)

**Safety-Sensitive Positions**

Random alcohol and drug testing of employees in "safety-sensitive" positions may be permissible when the intrusiveness of the search is minimal and a board is able to demonstrate that the drug-testing program furthers its interest in ensuring the physical safety of students. "Safety-sensitive" positions include those that involve the handling of potentially dangerous equipment or hazardous substances in an environment including a large number of children. *Aubrey v. Sch. Bd. of LaFayette Parish*, 148 F.3d 559 (5th Cir. 1998)

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**Note:** The following testing requirements apply to employees who operate commercial motor vehicles and are subject to commercial driver's license requirements in accordance with federal regulations.

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Testing of Drivers	<p>A district shall conduct testing, in accordance with federal regulations, of commercial motor vehicle operators for use of alcohol or a controlled substance that violates law or federal regulation.</p> <p><i>49 U.S.C. 31306; 49 C.F.R. Part 382</i></p>
Commercial Motor Vehicle Defined	<p>A commercial motor vehicle is defined as a motor vehicle used to transport passengers or property that:</p> <ol style="list-style-type: none"><li>1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;</li><li>2. Has a gross vehicle weight rating of 26,001 or more pounds; or</li><li>3. Is designed to transport 16 or more passengers, including the driver.</li></ol> <p><i>49 C.F.R. 382.107</i></p>
Testing Procedures	<p>A district shall ensure that all alcohol or controlled substances testing conducted under 49 C.F.R. Part 382 complies with the procedures set forth in 49 C.F.R. Part 40. <i>49 C.F.R. 382.105</i></p> <p>U.S. Department of Transportation (DOT) tests must be completely separate from non-DOT tests in all respects. DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. <i>49 C.F.R. 40.13</i></p>
Tests Required	<p>Required testing includes pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing. No driver shall refuse to submit to a post-accident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a return-to-duty or follow-up alcohol or controlled substances test. A district shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.</p> <p><i>49 C.F.R. 382.211, .309</i></p>
Education and Treatment	<p>A district is not required to provide an evaluation by a substance abuse professional or any subsequent recommended education or treatment for an employee who has violated a drug and alcohol regulation of the DOT.</p> <p>However, if a district offers an employee an opportunity to return to a safety-sensitive duty following a violation, the district must, before the employee again performs that duty, ensure that the employee receives an evaluation by a substance abuse professional and that the employee successfully complies with the professional's evaluation recommendations.</p> <p><i>49 C.F.R. 40.289</i></p>

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Return-to-Duty  
Testing

If a district permits an employee who has violated a DOT drug and alcohol regulation to return to safety-sensitive functions, the district must ensure that the employee takes a return-to-duty test. This test cannot occur until after the substance abuse professional has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

A district is not required to return an employee to safety-sensitive duties because the employee has met the conditions described in the preceding paragraph. Return-to-duty is a personnel decision that the district has the discretion to make subject to legal requirements.

*49 C.F.R. 40.305(a)–(b)*

Educational  
Materials

A district shall provide educational materials that explain the federal requirements and the district's policies and procedures with respect to meeting these requirements. The district shall ensure that a copy of these materials is distributed to each driver before the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position that requires driving a commercial motor vehicle. Written notice to representatives of employee organizations of the availability of this information shall also be provided. The materials shall include detailed discussion of at least the items listed at 49 C.F.R. 382.601.

*49 C.F.R. 382.601*

Reports

A district required by federal safety regulations to conduct alcohol and drug testing of an employee who holds a commercial driver's license shall report the following information to the Department of Public Safety:

1. A valid positive result on an alcohol or drug test and whether the specimen producing the result was a dilute specimen. "Valid positive result" means an alcohol concentration of 0.04 or greater on an alcohol confirmation test, or a result at or above the cutoff concentration levels listed in 49 C.F.R. 40.87 on a confirmation drug test. "Dilute specimen" means a specimen with creatinine and specific gravity values that are lower than expected for human urine.
2. A refusal to provide a specimen for an alcohol or drug test.
3. An adulterated specimen or substituted specimen, as defined at 49 C.F.R. 40.3, on an alcohol or drug test.

EMPLOYEE STANDARDS OF CONDUCT  
SEARCHES AND ALCOHOL/DRUG TESTING

DHE  
(LEGAL)

For purposes of this requirement, the term “employee” includes applicants for employment subject to pre-employment testing.

*Trans. Code 644.251–.252; 49 C.F.R. 40.3*

EMPLOYEE STANDARDS OF CONDUCT  
SEARCHES AND ALCOHOL/DRUG TESTING

DHE  
(LOCAL)

**Reasonable  
Suspicion Searches**

The District reserves the right to conduct searches when the District has reasonable suspicion to believe that a search will uncover evidence of work-related misconduct. The District may search the employee, the employee's personal items, work areas, lockers, and private vehicles parked on District premises or worksites or used in District business. Searches that reveal a violation of the District's standards of conduct may result in disciplinary action. [See DH]

**Reasonable  
Suspicion Alcohol  
and Drug Testing**

The District may remove an employee from duty and require testing if there is reasonable suspicion that the employee is under the influence of alcohol or drugs used in violation of District policy. The determination of reasonable suspicion may be based on specific observations of the appearance, behavior, speech, or body odors of the employee whose motor ability, emotional equilibrium, or mental acuity seems to be impaired while on duty or other relevant information. Any employee who is asked to submit to drug or alcohol testing shall be given the opportunity to provide relevant information about prescription or nonprescription medications that may affect the screening.

A District employee who refuses to comply with a directive to submit to testing based upon reasonable suspicion shall be subject to disciplinary action, up to and including termination.

A District employee confirmed to have violated the District's policy pertaining to alcohol or drugs may be subject to disciplinary action. [See DF series and DH]

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**Note:** The following provisions apply to employees who are covered by the federal Department of Transportation (DOT) rules.

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**Federally Required  
DOT Testing  
Program**

In accordance with DOT rules, the District shall establish an alcohol and controlled substances testing program to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by the drivers of commercial motor vehicles, including school buses. The primary purpose of the testing program is to prevent impaired employees from performing safety-sensitive functions.

The Superintendent shall designate a District official who shall be responsible for ensuring that information is disseminated to employees covered under this testing program regarding prohibited driver conduct, alcohol and controlled substances tests, and the consequences that follow positive test results.

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DHE  
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Drug-Related  
Violations

The following constitute drug-related violations under the DOT rules:

1. Refusing to submit to a required test for alcohol or controlled substances.
2. Providing an adulterated, diluted, or a substituted specimen on an alcohol or controlled substances test.
3. Testing positive for alcohol, at a concentration of 0.04 or above, in a post-accident test.
4. Testing positive for controlled substances in a post-accident test.
5. Testing positive for alcohol, at a concentration of 0.04 or above, in a random test.
6. Testing positive for controlled substances in a random test.
7. Testing positive for alcohol, at a concentration of 0.04 or above, in a reasonable suspicion test.
8. Testing positive for controlled substances in a reasonable suspicion test.

An employee who operates a commercial motor vehicle, including a bus, and commits a drug-related DOT violation as defined above shall not be eligible for reinstatement as a driver.

Alcohol Results  
Between 0.02 and  
0.04

In accordance with DOT rules, a driver tested under this policy and found to have an alcohol concentration of 0.02 or greater, but less than 0.04, shall be suspended from driving duties for at least 24 hours.

[In the event of a subsequent positive test result for alcohol of 0.02 or greater but less than 0.04, see the disciplinary consequences at District-Imposed Consequences, below.]

Reasonable  
Suspicion DOT  
Testing

Only supervisors specifically trained in accordance with federal regulations may, based upon reasonable suspicion, remove a driver from a safety-sensitive position and require testing for alcohol and/or controlled substances. The determination of reasonable suspicion shall be based on specific observations of the appearance, behavior, speech, or body odors of the driver whose motor ability, emotional equilibrium, or mental acuity seems to be impaired. Such observations must take place just preceding, during, or just after the period of the workday that the driver is on duty.

The observations may include indication of the chronic and withdrawal effects of controlled substances. Within 24 hours of the ob-

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served behavior, the supervisor shall provide a signed, written record documenting the observations leading to a controlled substance reasonable suspicion test.

**District-Imposed  
Consequences**

In addition to the consequences established by federal law, a District employee confirmed to have violated the District's policy pertaining to alcohol or controlled substances, including a second or subsequent positive test result for alcohol of 0.02 or greater but less than 0.04, shall be subject to District-imposed discipline, as determined by his or her supervisor and the Superintendent. Such discipline may include any appropriate action from suspension without pay during the period of removal from safety-sensitive functions, up to and including termination of employment. [See DF series]

In cases where a driver is also employed in a nondriving capacity by the District, disciplinary action imposed for violation of alcohol and controlled substances policies shall apply to the employee's functions and duties that involve driving. Additionally, upon recommendation of the employee's supervisor, disciplinary measures up to and including termination of employment with the District may be considered.

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**Note:** The following provisions address the District's drug- and alcohol-testing program.

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**District Drug-Testing  
Program**

In addition to the federally required DOT testing program, the District, under its own authority, shall establish a testing program to detect illegal drugs not screened for by DOT-mandated drug tests.

The testing program shall be designed to ensure that employees subject to the DOT rules are not abusing illegal drugs that may:

1. Impair their ability to perform the functions of their jobs safely and effectively;
2. Increase the potential for accidents, or substandard performance; or
3. Tend to undermine the safety and efficiency of the District schools, offices, and departments.

The District drug-testing program shall only apply to employees covered by the DOT rules and shall include pre-employment, random, reasonable suspicion, and post-accident testing for illegal drugs.

Illegal drugs are those drugs that cannot be obtained legally, or any prescription drug that has not been legally obtained or that has been legally obtained and is not being used in accordance with the

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prescribed dosage. Illegal drugs shall include controlled substances, controlled substance analogues, and dangerous drugs as defined in the Texas Health and Safety Code. Examples of illegal drugs shall include, but not be limited to, inhalants, bath salts, and synthetic marijuana.

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DHE  
(EXHIBIT)

### Postaccident Testing

This table depicts the circumstances under which an employer is required to perform a postaccident alcohol or controlled substances test, in accordance with 49 CFR 382.303(a).

<b>Types of accidents involved</b>	<b>Citation issued to the CMV driver</b>	<b>Test must be performed by the employer</b>
Human fatality	YES	YES
Human fatality	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
Bodily injury with immediate medical treatment away from the scene	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
Disabling damage to any motor vehicle requiring tow away	NO	NO

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**Hazard  
Communication Act**

A district shall perform the following duties in compliance with the Hazard Communication Act:

Notice

1. Post and maintain adequate notice, at locations where notices are normally posted, informing employees of their rights under the Hazard Communication Act. *Health and Safety Code 502.017(a)*

Education and  
Training

2. Provide an education and training program for employees who use or handle hazardous chemicals. "Employee" means a person who may be or may have been exposed to hazardous chemicals in the person's workplace under normal operating conditions or foreseeable emergencies. Workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances are not employees for purposes of these requirements. *Health and Safety Code 502.003(10), .009*
3. Keep the written hazard communication program and a record of each training session given to employees, including the date, a roster of the employees who attended, the subjects covered in the training session, and the names of the instructors. Records shall be maintained for at least five years. *Health and Safety Code 502.009(g)*

Workplace  
Chemical List

4. Compile and maintain a workplace chemical list that contains required information for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds, or as determined by the executive commissioner of the Health and Human Services Commission for certain highly toxic or dangerous hazardous chemicals. The list must be readily available to employees and their representatives. All employees shall be made aware of the list before working with or in a work area containing hazardous chemicals. *Health and Safety Code 502.005(a), (c)*
5. Update the list as necessary, but at least by December 31 of each year, and maintain the list for at least 30 years. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information. *Health and Safety Code 502.005(b), (d)*

Safety Data Sheets

6. Maintain a legible copy of the most current manufacturer's safety data sheets (SDS) for each hazardous chemical. If the district does not have a current SDS for a hazardous chemical when the chemical is received, the district shall request an SDS in writing from the manufacturer or distributor in a timely manner or otherwise obtain a current SDS. Safety data sheets shall be readily available, on request, for review by

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employees or designated representatives at each workplace.  
*Health and Safety Code 502.006*

Protective  
Equipment

7. Provide employees with appropriate personal protective equipment. *Health and Safety Code 502.017(b)*

Labeling

A label on an existing container of a hazardous chemical may not be removed or defaced unless it is illegible, inaccurate, or does not conform to the OSHA standard or other applicable labeling requirement. Primary and secondary containers must be relabeled in accordance with Health and Safety Code 502.007(a). An employee may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use of the employee who performs the transfer. *Health and Safety Code 502.007*

**Pest Control  
Treatment Notice**

The chief administrator or building manager shall notify persons who work in a district building of an indoor pest control treatment by:

1. Posting the sign made available by the certified applicator or technician in an area of common access that the persons are likely to check on a regular basis at least 48 hours before each planned treatment; and
2. Providing the pest control information sheet made available by the certified applicator or technician to a person working in the building on request.

*Occupations Code 1951.455; 4 TAC 7.146, .147 [See CLB]*

EMPLOYEE WELFARE  
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

DIA  
(LEGAL)

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**Note:** This policy addresses harassment of district employees. For legally referenced material relating to discrimination and retaliation, see DAA(LEGAL). For harassment of students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.

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**Official Oppression**

A public servant acting under color of the public servant's office or employment commits an offense if the public servant intentionally subjects another to sexual harassment.

A public servant acts under color of the public servant's office or employment if the person acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

*Penal Code 39.03(a)(3), (b), (c)*

**Harassment of Employees**

Harassment on the basis of a protected characteristic is a violation of the federal anti-discrimination laws. A district has an affirmative duty, under Title VII, to maintain a working environment free of harassment on the basis of sex, race, color, religion, and national origin. *42 U.S.C. 2000e, et seq.; 29 C.F.R. 1606.8(a), 1604.11*

Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment. *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004)

Title VII does not prohibit all verbal and physical harassment in the workplace. For example, harassment between men and women is not automatically unlawful sexual harassment merely because the words used have sexual content or connotations. *Oncale v. Sun-downer Offshore Services, Inc.*, 523 U.S. 75 (1998)

**Hostile Environment**

Verbal or physical conduct based on a person's sex, race, color, religion, or national origin constitutes unlawful harassment when the conduct:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;
2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. Otherwise adversely affects an individual's employment opportunities.

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Pennsylvania State Police v. Suders, 542 U.S. 129 (2004); Nat'l Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002); Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986); 29 C.F.R. 1604.11, 1606.8

Quid Pro Quo

Conduct of a sexual nature also constitutes harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual.

29 C.F.R. 1604.11(a)

Same-Sex Sexual  
Harassment

Same-sex sexual harassment constitutes sexual harassment. Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

**Harassment Policy**

A district should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate penalties, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned. 29 C.F.R. 1604.11(f)

**Corrective Action**

A district is responsible for acts of unlawful harassment by fellow employees and by nonemployees if the district, its agents, or its supervisory employees knew or should have known of the conduct, unless the district takes immediate and appropriate corrective action. 29 C.F.R. 1604.11(d), (e), 1606.8(d), (e)

When no tangible employment action is taken, a district may raise the following affirmative defense:

1. That the district exercised reasonable care to prevent and promptly correct any harassing behavior; and
2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998)

**Harassment of  
Unpaid Interns**

A district commits an unlawful employment practice if sexual harassment of an unpaid intern occurs and the district or its agents or supervisors know or should have known that the conduct constituting sexual harassment was occurring, and fail to take immediate and appropriate corrective action. *Labor Code 21.1065*

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FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

DIA  
(LOCAL)

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**Note:** This policy addresses discrimination, harassment, and retaliation involving District employees. For discrimination, harassment, and retaliation involving students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.

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**Definitions**

Solely for purposes of this policy, the term “employee” includes former employees, applicants for employment, and unpaid interns.

**Statement of  
Nondiscrimination**

The District prohibits discrimination, including harassment, against any employee on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of District policy.

**Discrimination**

Discrimination against an employee is defined as conduct directed at an employee on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law, that adversely affects the employee’s employment.

**Harassment**

Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee’s race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee’s work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee’s performance, environment, or employment opportunities.

**Examples**

Examples of prohibited harassment may include offensive or derogatory language directed at another person’s religious beliefs or practices, accent, skin color, gender identity, or need for workplace accommodation; threatening or intimidating conduct; offensive jokes, name calling, slurs, or rumors; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other stereotypes; or other types of aggressive conduct such as theft or damage to property.

**Sexual Harassment**

Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

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1. Submission to the conduct is either explicitly or implicitly a condition of an employee's employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or
2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.

Examples

Examples of sexual harassment may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; and other sexually motivated conduct, communication, or contact.

**Retaliation**

The District prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.

Examples

Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, unjustified negative evaluations, unjustified negative references, or increased surveillance.

**Prohibited Conduct**

In this policy, the term "prohibited conduct" includes discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

**Reporting Procedures**

An employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should immediately report the alleged acts. The employee may report the alleged acts to his or her supervisor or campus principal.

Alternatively, the employee may report the alleged acts to one of the District officials below.

**Definition of District Officials**

For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.

Title IX Coordinator

Reports of discrimination based on sex, including sexual harassment, may be directed to the designated Title IX coordinator. [See DIA(EXHIBIT)]

ADA / Section 504 Coordinator

Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator. [See DIA(EXHIBIT)]

Superintendent

The Superintendent shall serve as coordinator for purposes of District compliance with all other antidiscrimination laws.

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**Alternative  
Reporting  
Procedures**

An employee shall not be required to report prohibited conduct to the person alleged to have committed it. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

**Timely Reporting**

Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the District's ability to investigate and address the prohibited conduct.

**Notice of Report**

Any District supervisor who receives a report of prohibited conduct shall immediately notify the appropriate District official listed above and take any other steps required by this policy.

**Investigation of the  
Report**

The District may request, but shall not insist upon, a written report. If a report is made orally, the District official shall reduce the report to written form.

Upon receipt or notice of a report, the District official shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the District official shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.

If appropriate, the District shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.

The investigation may be conducted by the District official or a designee, such as the campus principal, or by a third party designated by the District, such as an attorney. When appropriate, the campus principal or supervisor shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

**Concluding the  
Investigation**

Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation.

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The investigator shall prepare a written report of the investigation. The report shall be filed with the District official overseeing the investigation.

**District Action**

If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.

The District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.

**Confidentiality**

To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

**Appeal**

A complainant who is dissatisfied with the outcome of the investigation may appeal through DGBA(LOCAL), beginning at the appropriate level.

The complainant may have a right to file a complaint with appropriate state or federal agencies.

**Records Retention**

Copies of reports alleging prohibited conduct, investigation reports, and related records shall be maintained by the District for a period of at least three years. [See CPC]

**Access to Policy**

This policy shall be distributed annually to District employees. Copies of the policy shall be readily available at each campus and the District administrative offices.

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DIA  
(EXHIBIT)

The District designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended:

Name: Leah Tunnell  
Position: Executive Director of Human Resources  
Address: 302 Laurel Drive, Friendswood, TX 77546  
Telephone: (281) 482-1267

The District designates the following person to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended:

Name: Dahria Driskell  
Position: Executive Director of Special Education  
Address: 302 Laurel Drive, Friendswood, TX 77546  
Telephone: (281) 482-0687

ASSIGNMENT AND SCHEDULES

DK  
(LEGAL)

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**Note:** The Board has adopted an [innovation plan](#)<sup>1</sup> that affects application of provisions in this legally referenced policy.

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<b>Credentials or Permit Required</b>	A public school employee must have the appropriate credentials for his or her current assignment specified in 19 Administrative Code Chapter 231, Requirements for Public School Personnel Assignments, unless the appropriate permit has been issued under Chapter 230, Subchapter F, Permits. <i>19 TAC 231.1(a)</i> [See DBA]
<b>Principal's Approval</b>	The principal of a campus shall approve all teacher and staff appointments for the campus from a pool of applicants selected by a district or of applicants who meet the hiring requirements established by a district, based on criteria developed by the principal after informal consultation with the faculty. A superintendent or designee has final placement authority for a teacher transferred because of enrollment shifts or program changes. <i>Education Code 11.202; Atty. Gen. Op. DM-27 (1991)</i>
<b>Transfers</b>	A district's employment policy may include a provision for providing each current district employee with an opportunity to participate in a process for transferring to another school in or position with the district. <i>Education Code 11.1513(c)(3)</i>
<b>Parent Notification</b>	If a district assigns an inappropriately certified or uncertified teacher to the same classroom for more than 30 consecutive instructional days during the same school year, it shall provide written notice of the assignment to the parents or guardians of each student in that classroom. <i>Education Code 21.057</i> [See DBA]

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<sup>1</sup> Innovation Plan: <http://myfisd.com/doi/>

ASSIGNMENT AND SCHEDULES

DK  
(LOCAL)

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**Note:** This local policy has been revised in accordance with the District's [innovation plan](http://myfisd.com/doi/).<sup>1</sup>

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**Superintendent's Authority**

All personnel are employed subject to assignment and reassignment by the Superintendent or designee when the Superintendent determines that the assignment or reassignment is in the best interest of the District. Reassignment shall be defined as a transfer to another position, department, or facility that does not necessitate a change in the employment contract of a contract employee. Any change in an employee's contract shall be in accordance with policy DC.

Any employee may request reassignment within the District to another position for which he or she is qualified.

**Campus Assignments**

The principal's criteria for approval of campus assignments and reassignments shall be consistent with District policy regarding equal opportunity employment, and with staffing patterns approved in the District and campus plans. [See BQ series] In exercising their authority to approve assignments and reassignments, principals shall work cooperatively with the central office staff to ensure the efficient operation of the District as a whole.

The Superintendent shall have the authority to approve a request by the principal for an individual without state certification to teach certain courses in accordance with the District's innovation plan. [See DBA]

**Supplemental Duties**

Noncontractual supplemental duties for which supplemental pay is received may be discontinued by either party at any time. An employee who wishes to relinquish a paid supplemental duty may do so by notifying the Superintendent or designee in writing. Paid supplemental duties are not part of the District's contractual obligation to the employee, and an employee shall hold no expectation of continuing assignment to any paid supplemental duty.

**Work Calendars and Schedules**

Subject to the Board-adopted budget and compensation plan and in harmony with employment contracts, the Superintendent shall determine required work calendars for all employees. [See DC, EB]

Daily time schedules for all employees shall be determined by the Superintendent or designee and principals.

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<sup>1</sup> Innovation Plan: <http://myfisd.com/doi/>

## **State Board for Educator Certification Criteria for Assignment of Public School Personnel**

A public school employee must have the appropriate credentials for his or her current assignment unless the appropriate permit has been issued. The credentials appropriate to each assignment are set forth in the State Board for Educator Certification (SBEC) rules at 19 Administrative Code Chapter 231.

The following sections indicate where the credentialing requirements for various positions are located in the SBEC rules.

### **Teachers in general**

<b>Grade Level</b>	<b>SBEC Rule</b>
Prekindergarten–Grade 6	19 TAC 231, Subchapter B
Grades 6–8	19 TAC 231, Subchapter C
Grades 9–12	19 TAC 231, Subchapter E

### **Teachers of elective, disciplinary, local credit, and innovative courses for grades 6–12**

The following positions and assignments are addressed at 19 Administrative Code 231, Subchapter D.

- ROTC
- Athletics, cheerleading, drill team, and marching band
- Disciplinary alternative education programs
- Innovative course
- Local credit course
- Advanced Placement and International Baccalaureate courses
- Driver education

### **Teachers of special education and related services personnel**

The following positions and assignments are addressed at 19 Administrative Code 231, Subchapter F.

- Special education teacher
- Teacher of adaptive physical education
- Full-time teacher of orthopedically impaired or other health impaired in a hospital class or home-based instruction
- Teacher of students with visual impairments

## ASSIGNMENT AND SCHEDULES

DK  
(EXHIBIT)

- Teacher of students with auditory impairments
- Teacher of gifted and talented students
- Special education counseling services
- Educational diagnostician
- Speech therapy services
- Vocational adjustment coordinator

### **Paraprofessional personnel**

Educational aides are addressed at 19 Administrative Code 231.641.

### **Administrators and other instructional and professional support personnel**

The following positions are addressed at 19 Administrative Code 231.643.

- Superintendent
- Principal
- Assistant principal
- School counselor
- Librarian
- Athletic director

### **Licensed professional support personnel**

The following positions are addressed at 19 Administrative Code 231.645.

- Associate school psychologist
- Audiologist
- Licensed professional counselor
- Marriage and family therapist
- Nurse
- Occupational therapist
- Physical therapist
- Physician
- School psychologist
- Social worker
- Speech language pathologist

PERFORMANCE APPRAISAL

DN  
(LOCAL)

<b>General Principles</b>	All District employees shall be periodically appraised in the performance of their duties. The District's employee evaluation and appraisal system shall be administered consistent with the general principles set out below.
<b>Criteria</b>	The employee's performance of assigned duties and other job-related criteria shall provide the basis for the employee's evaluation and appraisal. Employees shall be informed of the criteria on which they will be evaluated.
<b>Performance Review</b>	Evaluation and appraisal ratings shall be based on the evaluation instrument and cumulative performance data gathered by supervisors throughout the year. Each employee shall have at least one evaluative conference annually, except as otherwise provided by policy, to discuss the written evaluation and may have as many conferences about performance of duties as the supervisor deems necessary. [See also DNA and DNB]
<b>Documentation and Records</b>	Appraisal records and forms, reports, correspondence, and memoranda may be placed in each employee's personnel records to document performance.
<b>Employee Copy</b>	All employees shall receive a copy of their annual written evaluation.
<b>Complaints</b>	Employees may present complaints regarding the evaluation and appraisal process in accordance with the District's complaint policy for employees. [See DGBA]

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**Note:** The Board has adopted an [innovation plan](#)<sup>1</sup> that affects application of provisions in this legally referenced policy.

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<b>Teacher Appraisal</b>	<p>The employment policies adopted by the board must require a written evaluation of each teacher at annual or more frequent intervals.</p> <p>A teacher appraisal must be done at least once during each school year. A teacher may be appraised less frequently if the teacher agrees in writing and the teacher's most recent evaluation rated the teacher as at least proficient, or the equivalent, and did not identify any area of deficiency. A teacher who is appraised less frequently than annually must be appraised at least once during each period of five school years.</p> <p><i>Education Code 21.203, .352(c)</i></p>
<b>Interim Evaluations and Guidance</b>	<p>In addition to conducting a complete appraisal as frequently as required by Education Code 21.352(c), a district shall require that appropriate components of the appraisal process, such as classroom observations and walk-throughs, occur more frequently as necessary to ensure that a teacher receives adequate evaluation and guidance. A district shall give priority to conducting appropriate components more frequently for inexperienced teachers or experienced teachers with identified areas of deficiency. <i>Education Code 21.352(c-1)</i></p>
<b>Required Components</b>	<p>The statutorily required components of teacher appraisal are defined as follows:</p> <ol style="list-style-type: none"><li>1. The implementation of discipline management procedures is the teacher's pedagogical practices that produce student engagement and establish the learning environment.</li><li>2. The performance of teachers' students is how the individual teacher's students progress academically in response to the teacher's pedagogical practice as measured at the individual teacher level by one or more student growth measures.</li></ol> <p><i>19 TAC 150.1001(f)</i></p>
<b>Notice and Use of Evaluations</b>	<p>A district shall use a teacher's consecutive appraisals from more than one year, if available, in making employment decisions and developing career recommendations for the teacher. <i>Education Code 21.352(e)</i></p> <p>The district shall notify a teacher of the results of any appraisal of the teacher in a timely manner so that the appraisal may be used as a developmental tool by the district and the teacher to improve the overall performance of the teacher. <i>Education Code 21.352(f)</i></p>
<b>Role of Extracurricular Activities</b>	<p>A teacher who directs extracurricular activities in addition to performing classroom teaching duties shall be appraised only on the</p>

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basis of classroom teaching performance and not on performance in connection with extracurricular activities. *Education Code 21.353*

**Access to  
Evaluations**

A district shall maintain a written copy of the evaluation of each teacher's performance in the teacher's personnel file.

Each teacher is entitled to receive a written copy of the evaluation promptly on its completion. The evaluation and any rebuttal may be given to another school district at which the teacher has applied for employment at the request of that district.

*Education Code 21.352(c)*

**Confidentiality**

A document evaluating the performance of a teacher is confidential and is not subject to disclosure under the Public Information Act, Government Code 552. [See GBA]

A district may give TEA a document evaluating the performance of a teacher employed by the district for purposes of an investigation conducted by TEA. A document provided to TEA remains confidential unless the document becomes part of the record in a contested case under the Administrative Procedures Act, Government Code, Chapter 2001.

Except as provided by a court order prohibiting disclosure, a document provided to TEA may be used in a disciplinary proceeding against a teacher if the document may be admitted under rules of evidence applicable to a contested case under Government Code 2001.081.

*Education Code 21.355*

**Two Appraisal  
Methods**

A district shall use one of the following methods to appraise teachers:

1. The teacher appraisal system recommended by the commissioner of education [see State Method (T-TESS), below]; or
2. A local teacher appraisal system [see District Option and Campus Option, below].

*Education Code 21.352(a); 19 TAC 150.1001(a)*

**Selection of  
Appraisal Method**

A superintendent, with the approval of a board, may select the state appraisal method. Each district or campus wanting to select or develop an alternative teacher appraisal system must follow the requirements set forth below at District Option or Campus Option. *19 TAC 150.1001(c)*

**Notice to Service  
Center**

A superintendent shall notify the executive director of the district's regional education service center in writing of the district's choice of appraisal system when using an alternative to the state appraisal

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al method and detail the components of that system by the first day of instruction for the school year in which the alternative system is used.

A district shall submit annually to its service center a summary of the campus-level evaluation scores from the state appraisal method or the district's locally adopted appraisal system, in a manner prescribed by the commissioner.

*19 TAC 150.1008*

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**Note:** The following provisions apply to teacher appraisal using the state appraisal method.

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**State Method  
(T-TESS)**

The commissioner's recommended teacher appraisal system, the Texas Teacher Evaluation and Support System (T-TESS), was developed in accordance with Education Code 21.351. *19 TAC 150.1001(b), .1002(a)*

Orientation and  
Annual Review

A district shall ensure that all teachers are provided with an orientation to the T-TESS no later than the final day of the first three weeks of school and at least two weeks before the first observation when:

1. The teacher is new to the district;
2. The teacher has never been appraised under the T-TESS; or
3. District policy regarding teacher appraisal has changed since the last time the teacher was provided with an orientation to the T-TESS.

The teacher orientation shall be conducted in a face-to-face setting during a district's first year of T-TESS implementation and include all state and local appraisal policies and the local appraisal calendar. In addition to the orientation, campuses may hold other sessions sufficient in length allowing teachers to actively participate in a discussion of the T-TESS specifics and to have their questions answered.

*19 TAC 150.1006*

Appraisers

The teacher appraisal process requires at least one certified appraiser. An appraiser must be the teacher's supervisor or a person approved by the board.

*Campus  
Administrator*

Only a campus administrator may act as a certified appraiser, except as provided below.

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Under the T-TESS, a “campus administrator” includes a principal, an assistant principal, an administrator who holds a comparable administrator/supervisor certificate established by the State Board for Educator Certification, or supervisory staff whose job description includes the appraisal of teachers and who is not a classroom teacher.

An individual other than a campus administrator may act as a certified appraiser if:

1. The individual has been certified by completing the required training prior to conducting appraisals; and
2. In the case where the certified appraiser is a classroom teacher, the certified appraiser:
  - a. Conducts appraisals at the same school campus at which the certified appraiser teaches if the certified appraiser is the chair of a department or grade level whose job description includes classroom observation responsibilities; or
  - b. Does not conduct appraisals of classroom teachers who teach at the same campus as the certified appraiser if the certified appraiser is not a department or grade-level chair.

*Training and  
Certification*

Before conducting appraisals, an appraiser must be certified by having satisfactorily completed the state-approved T-TESS appraiser training and having passed the T-TESS certification examination, and must have received Instructional Leadership Training (ILT), Instructional Leadership Development (ILD), or Advanced Educational Leadership (AEL) certification. Appraisers without ILT, ILD, or AEL certification before January 1, 2016, may not take ILT or ILD to satisfy the requirement. Periodic recertification and training shall be required.

*Education Code 21.351(c); 19 TAC 150.1005*

Appraisal Calendar

A district shall establish a calendar for teacher appraisals and provide that calendar to teachers within three weeks from the first day of instruction. The appraisal period for each teacher must include all of the days of the teacher’s contract.

Observations during the appraisal period must be conducted during the required days of instruction for students during one school year.

The appraisal calendar shall:

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1. Exclude observations in the two weeks after the day of completion of the T-TESS orientation in the school years when an orientation is required; and
2. Indicate a period for end-of-year conferences that ends no later than 15 working days before the last day of instruction for students.

*19 TAC 150.1003(d)*

A teacher may be given advance notice of the date or time of an appraisal, but advance notice is not required. *Education Code 21.352(d); 19 TAC 150.1003(c)*

Assessment of  
Teacher  
Performance

Each teacher must be appraised each school year, except as provided below at Less-Than-Annual Appraisal. Whenever possible, an appraisal shall be based on the teacher's performance in fields and teaching assignments for which he or she is certified. *19 TAC 150.1003(a)*

During the appraisal period, the certified appraiser shall evaluate and document teacher performance specifically related to the domain criteria as identified in 19 Administrative Code 150.1002(a) and the performance of teachers' students as defined in 19 Administrative Code 150.1001(f)(2). *19 TAC 150.1003(e)*

*Less-Than-  
Annual Appraisal*

A teacher may receive a full appraisal less than annually if the teacher agrees in writing and the teacher's most recent full appraisal resulted in the teacher receiving summative ratings of at least proficient on nine of the sixteen dimensions and did not identify any area of deficiency, defined as a rating of Improvement Needed or its equivalent, on any of the sixteen dimensions identified in 19 Administrative Code 150.1002(a) or the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2). A teacher who receives a full appraisal less than annually must receive a full appraisal at least once during each period of five school years.

District policy may stipulate:

1. Whether the option to receive a full appraisal less frequently than annually is to be made available to teachers;
2. Whether the option to receive a full appraisal less frequently than annually is to be adopted district-wide or is to be campus specific;
3. If the appraisal accompanying a teacher new to a district or campus meets this option, whether the appraisal is to be ac-

cepted or whether that teacher is to be appraised by the new campus administrator; and

4. Whether a certified appraiser may place a teacher on the traditional appraisal cycle as a result of performance deficiencies documented in accordance with 19 Administrative Code 150.1003(b)(6) and (f) (related to cumulative data regarding teacher performance in addition to formal classroom observations).

A school district may choose annually to review the written agreement to have less frequent full appraisals with the teacher. However, at the conclusion of the school year, the district may modify appraisal options through board policy and may make changes to expectations for appraisals that apply to all teachers regardless of a teacher's participation in the appraisal option in the previous year(s).

In a year in which a teacher does not receive a full appraisal due to meeting the requirements, a teacher shall participate in:

1. The Goal-Setting and Professional Development Plan process;
2. The performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2); and
3. A modified end-of-year conference that addresses:
  - a. The progress on the Goal-Setting and Professional Development Plan;
  - b. The performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2); and
  - c. The following year's Goal-Setting and Professional Development plan.

*19 TAC 150.1003(l)*

*Domains and  
Dimensions*

Each teacher shall be appraised on the following domains and dimensions of the T-TESS rubric that is aligned to the Texas Teacher Standards in 19 Administrative Code Chapter 149 (relating to Commissioner's Rules Concerning Educator Standards):

1. Domain I. Planning, which includes the following dimensions:
  - a. Standards and alignment;
  - b. Data and assessment;
  - c. Knowledge of students; and

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- d. Activities.
- 2. Domain II. Instruction, which includes the following dimensions:
  - a. Achieving expectations;
  - b. Content knowledge and expertise;
  - c. Communication;
  - d. Differentiation; and
  - e. Monitor and adjust.
- 3. Domain III. Learning Environment, which includes the following dimensions:
  - a. Classroom environment, routines, and procedures;
  - b. Managing student behavior; and
  - c. Classroom culture.
- 4. Domain IV. Professional Practices and Responsibilities, which includes the following dimensions:
  - a. Professional demeanor and ethics;
  - b. Goal setting;
  - c. Professional development; and
  - d. School community involvement.

The evaluation of each of the dimensions above shall consider all data generated in the appraisal process. The data for the appraisal of each dimension shall be gathered from pre-conferences, observations, post-conferences, end-of-year conferences, the Goal-Setting and Professional Development Plan process, and other documented sources.

Each teacher shall be evaluated on the 16 dimensions in Domains I–IV identified above using the following categories:

- 1. Distinguished;
- 2. Accomplished;
- 3. Proficient;
- 4. Developing; and
- 5. Improvement needed.

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*Student  
Performance*

Beginning with the 2017–18 school year, each teacher appraisal shall include the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2) (relating to student growth measures).

If calculating a single overall summative appraisal score for teachers, the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2), shall count for at least 20 percent of a teacher's summative score.

Each teacher shall be evaluated on the performance of teachers' students using one of the terms from the following categories:

1. Distinguished or well above expectations;
2. Accomplished or above expectations;
3. Proficient or at expectations;
4. Developing or below expectations; or
5. Improvement needed or well below expectations.

*19 TAC 150.1002*

Appraisal Process

The annual teacher appraisal, or full appraisal, shall include:

1. A completed and appraiser-approved Goal-Setting and Professional Development Plan that shall be:
  - a. Submitted to the teacher's appraiser within the first six weeks from the day of completion of the T-TESS orientation for teachers in their first year of appraisal under the T-TESS or for teachers new to the district; or
  - b. Initially drafted in conjunction with the teacher's end-of-year conference from the previous year, revised as needed based on changes to the context of the teacher's assignment during the current school year, and submitted to the teacher's appraiser within the first six weeks of instruction; and
  - c. Maintained throughout the course of the school year by the teacher to track progress in the attainment of goals and participation in professional development activities detailed in the approved plan;
  - d. Shared with the teacher's appraiser prior to the end-of-year conference; and

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- e. Used after the end-of-year conference in the determination of ratings for the goal setting and professional development dimensions of the T-TESS rubric;
2. For a teacher in the first year of appraisal under the T-TESS or for teachers new to the district, a Goal-Setting and Professional Development Plan conference prior to the teacher submitting the plan to the teacher's appraiser;
3. After a teacher's first year of appraisal under the T-TESS within the district, an observation pre-conference conducted prior to announced observations;
4. At least one classroom observation of a minimum of 45 minutes, with additional walk-throughs and observations conducted at the discretion of the certified appraiser and in accordance with the Education Code 21.352(c-1). Additional observations and walk-throughs do not require an observation post-conference. Additional observations and walk-throughs do require a written summary if the data gathered during the additional observation or walk-through will impact the teacher's summative appraisal ratings, in which case the written summary shall be shared within ten working days after the completion of the additional observation or walk-through. Title 19 Administrative Code 150.1004 (relating to Teacher Response and Appeals) applies to a written summary of an additional observation or walk-through that will impact the teacher's summative appraisal ratings;
5. An observation post-conference that:
  - a. Shall be conducted within ten working days after the completion of an observation;
  - b. Is diagnostic and prescriptive in nature;
  - c. Includes a written report of the rating of each dimension observed that is presented to the teacher only after a discussion of the areas for reinforcement and areas for refinement; and
  - d. Can allow for, at the discretion of the appraiser, a revision to an area for reinforcement or refinement based on the post-conference discussion with the teacher;
6. Cumulative data from written documentation collected regarding job-related teacher performance, in addition to formal classroom observations;
7. An end-of-year conference that:

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- a. Reviews the appraisal data collected throughout the current school year and previous school years, if available;
  - b. Examines and discusses the evidence related to the teacher's performance on the four dimensions of Domain IV of the T-TESS rubric;
  - c. Examines and discusses evidence related to the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2) (relating to student growth measures), when available; and
  - d. Identifies potential goals and professional development activities for the teacher for the next school year; and
8. A written summative annual appraisal report to be provided to the teacher within ten working days of the conclusion of the end-of-year conference.

*19 TAC 150.1003(b)*

*Shorter  
Observations*

By written, mutual consent of the teacher and the certified appraiser, the required 45 minutes of observation may be conducted in shorter time segments. The time segments must aggregate to at least 45 minutes. *19 TAC 150.1003(g)*

*Cumulative Data*

The certified appraiser is responsible for documentation of cumulative data. Any third-party information from a source other than the certified appraiser that the certified appraiser wishes to include as cumulative data shall be verified and documented by the certified appraiser. Any documentation that will influence the teacher's summative annual appraisal report must be shared in writing with the teacher within ten working days of the certified appraiser's knowledge of the occurrence. The principal shall also be notified in writing of the cumulative data when the certified appraiser is not the teacher's principal. *19 TAC 150.1003(f)*

**Summative Report**

A written summative annual appraisal report shall be shared with the teacher no later than 15 working days before the last day of instruction for students. The written summative annual appraisal report shall be placed in the teacher's personnel file by the end of the appraisal period. *19 TAC 150.1003(h)*

**End-of-Year  
Conference**

An end-of-year conference shall be held within a time frame specified on the district calendar, no later than 15 working days before the last day of instruction for students. The end-of-year conference shall focus on the data and evidence gathered throughout the appraisal year; the teacher's efforts as they pertain to Domain IV; the results of the performance of teachers' students, when available, as defined in 19 Administrative Code 150.1001(f)(2); and the po-

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tential goals and professional development plans for the following year. The written summative annual appraisal report shall be shared with the teacher within ten working days following the conclusion of the end-of-year conference but no later than 15 working days before the last day of instruction.

In cases where the certified appraiser is not an administrator on the teacher's campus, either the principal, assistant principal, or another supervisory staff member designated as an administrator on the campus must participate in the end-of-year conference.

*19 TAC 150.1003(i), (j)*

Additional  
Documentation

Any documentation collected after the end-of-year conference but before the end of the contract term during one school year may be considered as part of the appraisal of a teacher. If the documentation affects the teacher's evaluation in any dimension, another summative report shall be developed to inform the teacher of the changes. *19 TAC 150.1003(k)*

**Teacher Response  
and Rebuttal**

A teacher may submit a written response or rebuttal at the following times:

1. For Domains I, II, and III, after receiving a written observation summary or any other written documentation related to the ratings of those three domains; or
2. For Domain IV and for the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2), after receiving a written summative annual appraisal report.

Any written response or rebuttal must be submitted within ten working days of receiving a written observation summary, a written summative annual appraisal report, or any other written documentation associated with the teacher's appraisal. A teacher may not submit a written response or rebuttal to a written summative annual appraisal report for the ratings in Domains I, II, and III if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to submit a written response or rebuttal.

*Education Code 21.352(c); 19 TAC 150.1004(a), (b)*

**Request for Second  
Appraisal**

A teacher may request a second appraisal by another certified appraiser at the following times:

1. For Domains I, II, and III, after receiving a written observation summary with which the teacher disagrees; or

2. For Domain IV and for the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2), after receiving a written summative annual appraisal report with which the teacher disagrees.

The second appraisal must be requested within ten working days of receiving a written observation summary or a written summative annual appraisal report. A teacher may not request a second appraisal by another certified appraiser in response to a written summative annual appraisal report for the ratings of dimensions in Domains I, II, and III if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to request a second appraisal.

A teacher may be given advance notice of the date or time of a second appraisal, but advance notice is not required.

The second appraiser shall make observations and walk-throughs as necessary to evaluate the dimensions in Domains I–III or shall review the Goal-Setting and Professional Development Plan for evidence of goal attainment and professional development activities, when applicable. Cumulative data may also be used by the second appraiser to evaluate other dimensions.

A district shall adopt written procedures for determining the selection of second appraisers. The procedures shall be disseminated to each teacher at the time of employment and updated annually or as needed.

*Education Code 21.352(c); 19 TAC 150.1004(c)–(g)*

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**Note:** The following provisions apply to teacher appraisal using a district-developed appraisal method.

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**District Option**

A district that does not choose to use the T-TESS must develop its own teacher-appraisal system supported by locally adopted policy and procedures and by the processes outlined below.

Development of  
Appraisal System

The district-level planning and decision-making committee shall:

1. Develop an appraisal process;
2. Develop evaluation criteria, including discipline management and performance of the teachers' students; and
3. Consult with the campus-planning and decision-making committee on each campus in the district.

Appraisal Process

The appraisal process shall include:

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1. At least one appraisal each year, or less frequently if in accordance with Education Code 21.352(c) [see Teacher Appraisal, above];
2. A conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and
3. Criteria based on observable, job-related behavior, including:
  - a. Teachers' implementation of discipline management procedures, as defined in 19 Administrative Code 150.1001(f)(1); and
  - b. Beginning with the 2017–18 school year, the performance of the teachers' students as defined in 19 Administrative Code 150.1001(f)(2).

**Board Acceptance**

A district-level planning and decision-making committee shall submit the appraisal process and criteria to the superintendent, who shall submit the appraisal process and criteria to the board with a recommendation to accept or reject.

The board may accept or reject, with comments, the appraisal process and performance criteria, but may not modify the process or criteria.

*Education Code 21.352(a)(2), (b); 19 TAC 150.1007(a)*

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**Note:** The following provisions apply to teacher appraisal using a campus-developed appraisal method.

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**Campus Option**

A campus within a district may choose to develop a local appraisal system.

**Development of  
Appraisal System**

The campus planning and decision-making committee shall:

1. Develop an appraisal process;
2. Develop evaluation criteria, including discipline management and performance of the teachers' students; and
3. Submit the process and criteria to the district-level planning and decision-making committee.

**Appraisal Process**

The appraisal process shall include:

1. At least one appraisal each year, or less frequently if in accordance with Education Code 21.352(c) [see Teacher Appraisal above];

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2. A conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and
3. Criteria based on observable, job-related behavior, including:
  - a. Teachers' implementation of discipline management procedures, as defined in 19 Administrative Code 150.1001(f)(1); and
  - b. Beginning with the 2017–18 school year, the performance of the teachers' students as defined in 19 Administrative Code 150.1001(f)(2).

Board Acceptance

Upon submission of the appraisal process and criteria to the district-level planning and decision-making committee, the committee shall make a recommendation to accept or reject the appraisal process and criteria and transmit that recommendation to the superintendent.

The superintendent shall submit to the board:

1. The recommended campus appraisal process and criteria;
2. The district-level planning and decision-making committee's recommendation; and
3. The superintendent's recommendation.

The board may accept or reject, with comments, an appraisal process and performance criteria, but may not modify the process or criteria.

*Education Code 21.352(a)(2), (b); 19 TAC 150.1007(b)*

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**Note:** The following provision applies to appraiser training under a local appraisal process (district- or campus-developed).

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**Appraisers**

A district that locally develops and adopts its own educator appraisal system should have a clearly defined set of procedures for training appraisers. The district should identify the qualities appraisers must demonstrate and include appropriate proficiency checks to evaluate the performance of all educators performing appraisals under the district's locally adopted appraisal systems. The school district shall be responsible for documenting that appraisers have met training criteria established by the district. 19 TAC 244.3

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**Note:** The standards to be used to inform the training, appraisal, and professional development of teachers are outlined in 19 Administrative Code 149.1001.

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<sup>1</sup> Innovation Plan: <http://myfisd.com/doi/>

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**Note:** This local policy has been revised in accordance with the District's [innovation plan](#).<sup>1</sup>

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**Mustang Teacher  
Evaluation and  
Support System  
(M-TESS)**

Beginning with the Educator Goal-Setting and Professional Development Plan in the spring semester of 2016 (based on individual campus decision) and all other components of the Mustang Teacher Evaluation and Support System (M-TESS) District-wide in the fall semester of 2016, the formal appraisal of District teachers shall be in accordance with an alternate appraisal system developed in compliance with statutory provisions and state rules. The M-TESS is a locally developed appraisal system that allows teachers the opportunity to be appraised by formal and informal walk-throughs and other relevant documentation such as student performance, classroom management, professional development, leadership, observations, collaborative conferences, and goal-setting activities. The M-TESS shall utilize domains: planning, instruction, learning environment, and professional practices and responsibilities.

All teachers shall receive a 45-minute scheduled observation at least once every three years using all four domains of the M-TESS. All teachers shall also receive at least one formal walk-through every year and shall be required to complete the Needs Assessment document and Professional Goals, and participate in a fall semester goal-setting conference and an end-of-year (EOY) conference.

A teacher may be eligible to be appraised without an annual, formal 45-minute observation if he or she:

- Has been employed by the District for more than two consecutive years;
- Has not received a score of "improvement needed" on any dimension of the prior year's rubric;
- Has not been placed on a growth plan;
- Has not had any concerns expressed by his or her appraiser or other administrators; and
- Has completed the Domain IV-only agreement.

The EOY appraisal document for a teacher not required to be assessed in all domains of M-TESS shall include the M-TESS Domain IV, which includes:

- Professional Demeanor and Ethics;
- Goal Setting;

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(LOCAL)

- Professional Development; and
- School Community Involvement.

Any domain may be scored for teachers not scheduled to be appraised in the complete M-TESS by using data from walk-throughs as long as the documentation has been shared with the teacher.

At any time, a principal may determine that a formal 45-minute observation is needed even in a year that a teacher has not been scheduled to be appraised in Domains I–III. In the event that a principal determines a 45-minute observation is needed in a year when all domains are not scheduled to be evaluated, the principal shall notify the teacher in writing of the principal's intent to formally observe during a 45-minute observation at least ten days prior to any observation, but the actual observation may not be scheduled. The result shall be an appraisal reflecting all domains of the M-TESS.

The District shall establish an appraisal calendar each year.

**Formal Observation** The formal observation for a teacher's appraisal shall be scheduled by date and time.

**Alternate Appraisers** The list of qualified appraisers who may appraise a teacher in place of the teacher's supervisor shall be approved by the Board.

**Second Appraisal** Upon a teacher's request for a second appraiser, the Superintendent or designee shall select the second appraiser from a pre-established roster of trained appraisers.

The formal observation for a second appraisal shall be unscheduled per current policy.

**Scores** The Board shall ensure that the Superintendent or designee establishes procedures regarding how domain scores from first and second appraisals will be used.

**Employment Decisions** When relevant to decisions regarding term contracts, written evaluations of a teacher's performance, as documented to date, and any other information the administration deems appropriate, shall be considered in decisions affecting contract status.

**Grievances** Complaints regarding teacher appraisal shall be addressed in accordance with DGBA(LOCAL).

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<sup>1</sup> Innovation Plan: <http://myfisd.com/doi/>

PERFORMANCE APPRAISAL  
EVALUATION OF CAMPUS ADMINISTRATORS

DNB  
(LEGAL)

**Frequency**

The employment policies adopted by a board must require a written evaluation at annual or more frequent intervals of each principal, supervisor, school counselor, or other full-time, certified professional employee, and nurse. *Education Code 21.203(a)*

District funds may not be used to pay an administrator who has not been appraised in the preceding 15 months. *Education Code 21.354(d)*

**Principal Appraisal**

A district shall appraise each principal annually. In appraising principals, a school district shall use either:

1. The appraisal system and school leadership standards and indicators developed or established by the commissioner of education; or
2. An appraisal process and performance criteria developed by the district in consultation with the district-level and campus-level committees [see BQA and BQB] and adopted by the board.

*Education Code 21.3541(f), (g); 19 TAC 150.1023(a)*

The commissioner's recommended principal appraisal system, the Texas Principal Evaluation and Support System (T-PESS), was developed in accordance with Education Code 21.3541.

The superintendent, with the approval of the board, may select the T-PESS. Each school district wanting to select or develop an alternative principal appraisal system must follow Education Code 21.3541, and 19 Administrative Code 150.1026 (relating to Alternatives to the Commissioner's Recommended Principal Appraisal System).

*19 TAC 150.1021(b), (c)*

**Notice to ESC**

The superintendent shall notify the executive director of its regional education service center in writing of the school district's choice of appraisal system when using an alternative to the commissioner's recommended appraisal system and detail the components of that system by the first day of instruction for the school year in which the alternative system is used.

Each school district shall submit annually to its regional education service center a summary of the evaluation scores from the T-PESS or the district's locally adopted appraisal system, in a manner prescribed by the commissioner.

*19 TAC 150.1027*

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Texas Principal  
Evaluation and  
Support System  
(T-PESS)

Each principal shall be appraised on the following standards and indicators of the T-PESS rubric that is aligned to the Texas Administrator Standards in 19 Administrative Code, Chapter 149 (relating to Commissioner's Rules Concerning Educator Standards):

1. Standard I. Instructional Leadership, which includes four indicators;
2. Standard II. Human Capital, which includes four indicators;
3. Standard III. Executive Leadership, which includes four indicators;
4. Standard IV. School Culture, which includes five indicators; and
5. Standard V. Strategic Operations, which includes four indicators.

The evaluation of each of the standards and indicators above shall consider all data generated in the appraisal process.

Each principal shall be evaluated on the attainment and progress toward at least one goal, as referenced in 19 Administrative Code 150.1023 (relating to Appraisals, Data Sources, and Conferences). At least one goal shall be focused on the improvement of the principal's practice, as captured in the T-PESS rubric indicators and descriptors.

If calculating a single overall summative appraisal score for principals, the rating for the attainment of goals shall count for:

1. At least 20 percent of a principal's summative score for a principal who has served at least one year in his or her role on the same campus; or
2. At least 30 percent of a principal's summative score for a principal who is in his or her first year as principal on a particular campus.

Each principal shall be evaluated on each of the 21 indicators in Standards I–V identified above and on the attainment of each goal, using the following categories:

1. Distinguished;
2. Accomplished;
3. Proficient;
4. Developing; and
5. Improvement needed.

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Beginning with the 2017–18 school year, each principal appraisal shall include the campus-level academic growth or progress of the students enrolled at the principal's campus.

If calculating a single overall summative appraisal score for principals, the measure of student growth or progress shall count for:

1. At least 20 percent of a principal's summative score for a principal who has served two or more years in his or her role on the same campus;
2. At least 10 percent of a principal's summative score for a principal who has served one year in his or her role on the same campus; or
3. May not be included in calculating a single overall summative appraisal score for a principal who is in his or her first year as principal on a particular campus.

Each principal shall be evaluated on student growth or progress using one of the terms from the following categories:

1. Distinguished;
2. Accomplished;
3. Proficient;
4. Developing; or
5. Improvement needed.

*19 TAC 150.1022*

*Appraisal  
Procedures*

The annual principal appraisal shall include:

1. At least one appraiser-approved goal that shall be:
  - a. Initially drafted in conjunction with the principal's end-of-year conference from the previous year, as applicable, revised as needed based on changes to the context of the principal's assignment at the beginning of the current school year, and submitted to the principal's appraiser; and
  - b. Maintained throughout the course of the school year by the principal to track progress in the attainment of goals and the actions taken to achieve the goals;
  - c. Shared with the principal's appraiser prior to the end-of-year conference; and

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- d. Used after the end-of-year conference in the determination of ratings for the attainment of goals;
2. A pre-evaluation conference prior to the principal submitting his or her goals to the principal's appraiser;
3. A mid-year conference to determine and discuss progress toward the attainment of goals;
4. An end-of-year conference that:
  - a. Reviews data collected throughout the current school year and previous school years, if available;
  - b. Examines and discusses the artifacts and evidence related to the principal's performance on the 21 indicators of T-PESS rubric and the attainment of goals;
  - c. Examines and discusses evidence related to student growth or progress measures, as described in 19 Administrative Code 150.1022(f)–(h), when available; and
  - d. Identifies potential goals and professional development activities for the principal for the next school year; and
5. A written summative annual appraisal report to be provided to the principal after the conclusion of the end-of-year conference.

*Calendar*

Each school district shall establish a calendar for the appraisal of principals and provide that calendar to principals prior to the pre-evaluation conference.

*Appraisal Report*

The written summative annual appraisal report shall be placed in the principal's personnel file by the end of the appraisal period.

*Additional  
Documentation*

Any documentation collected after the end-of-year conference but before the end of the contract term during one school year may be considered as part of the appraisal of a principal. If the documentation affects the principal's evaluation in any indicator, the attainment of goals, or a measure of student growth or progress, another summative report shall be developed to inform the principal of the changes prior to the end of the contract term.

*19 TAC 150.1023(b)–(e)*

*Appraiser  
Qualifications*

The principal appraisal process requires at least one certified appraiser. Before conducting an appraisal, an appraiser must be certified by having satisfactorily completed the state-approved T-PESS. Periodic recertification and training may be required. *19 TAC 150.1024*

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*Orientation*

A district shall ensure that a principal is provided with an orientation of the T-PESS either prior to or in conjunction with the pre-evaluation conference when:

1. The principal is new to the district;
2. The principal has never been appraised under the T-PESS; or
3. District policy regarding principal appraisal has changed since the last time the principal was provided with an orientation to the T-PESS.

The principal orientation shall include all state and local appraisal policies and the local appraisal calendar.

*19 TAC 150.1025*

Alternatives to  
T-PESS

A district that does not choose to use the T-PESS must develop its own principal appraisal system supported by locally adopted policy and procedures; developed in consultation with the district-level and campus-level committees established under Education Code 11.251; and adopted by the board. *Education Code 21.3541; 19 TAC 150.1026*

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**Note:** The standards, indicators, knowledge, and skills to be used to align with the training, appraisal, and professional development of principals are outlined in 19 Administrative Code 149.2001.

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**Appraisal of Campus  
Administrators Other  
Than Principals**

A district shall appraise each campus administrator, other than a principal, annually using either:

1. The commissioner's recommended appraisal process and performance criteria; or
2. An appraisal process and performance criteria developed by the district in consultation with the district- and campus-level committees and adopted by the board.

*Education Code 21.354(c)*

A district may use the T-PESS to appraise campus administrators other than principals provided the school district makes appropriate modifications to ensure that the T-PESS rubric and components fit the job descriptions of the campus administrators other than principals evaluated with the T-PESS. A district using T-PESS for administrators other than principals shall evaluate administrators on the attainment and progress toward at least one goal, as referenced in 19 Administrative Code 150.1023 (relating to Appraisals, Data Sources, and Conferences). At least one goal shall be focused on

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the improvement of the administrator's practice, as captured in the T-PESS rubric indicators and descriptors.

Each school district wanting to select or develop a local appraisal system for campus administrators other than principals must use an appraisal process and performance criteria developed in consultation with the district- and campus-level committees established under Education Code 11.251; and adopted by the board.

*Education Code 21.354(c)(2); 19 TAC 150.1028, 244.2(c)*

**Appraisers**

A district using T-PESS for administrators other than principals or that locally develops and adopts its own educator appraisal system should have a clearly defined set of procedures for training appraisers. The school district should identify the qualities appraisers must demonstrate and include appropriate proficiency checks to evaluate the performance of all educators performing appraisals under the district's adopted appraisal systems. The school district shall be responsible for documenting that appraisers have met training criteria established by the district. *19 TAC 244.2(c), .3*

**School Counselors**

The commissioner shall develop and periodically update an evaluation form for use by districts in evaluating school counselors.  
*Education Code 21.356*

**Confidentiality**

A document evaluating the performance of an administrator is confidential and is not subject to disclosure under the Public Information Act, Government Code 552. [See GBA]

A district may give TEA a document evaluating the performance of an administrator employed by the district for purposes of an investigation conducted by TEA. A document provided to TEA remains confidential unless the document becomes part of the record in a contested case under the Administrative Procedures Act, Government Code, Chapter 2001.

Except as provided by a court order prohibiting disclosure, a document provided to TEA may be used in a disciplinary proceeding against an administrator if the document may be admitted under rules of evidence applicable to a contested case under Government Code 2001.081.

*Education Code 21.355*

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<b>Principals</b>	The District shall appraise principals using the Texas Principal Evaluation and Support System (T-PESS) in accordance with law and administrative regulations.
<b>Other Campus Administrators</b>	The appraisal system used for campus administrators other than principals shall be determined by each administrator's position and job responsibilities and shall consist of either a local appraisal system developed in accordance with law and administrative regulations or a modified version of the T-PESS.
<b>Frequency</b>	District principals and other campus administrators shall be appraised annually.