

EMPLOYMENT OBJECTIVES
EQUAL EMPLOYMENT OPPORTUNITY

DAA
(LEGAL)

Note: This policy addresses the prohibition against discrimination in hiring and discharging employees. For legally referenced material relating to prohibited discrimination, harassment, and retaliation with respect to compensation, terms, conditions, or privileges of employment, see DIA(LEGAL).

Unlawful Hiring and Discharge

It is an unlawful employment practice for a district to fail or refuse to hire or to discharge any individual because of such individual's:

1. Race, color, or national origin;
2. Religion;
3. Sex;
4. Age;
5. Disability; or
6. Genetic information [see DAB].

Federal Law

Section 1981 of the Civil Rights Act of 1866 (Section 1981)—race. *42 U.S.C. 1981*

Title VII of the Civil Rights Act of 1964 (Title VII)—race, color, religion, sex, and national origin. *42 U.S.C. 2000e et seq.*

Age Discrimination in Employment Act of 1967 (ADEA)—age, over 40. *29 U.S.C. 621 et seq.*

Section 504 of the Rehabilitation Act of 1973 (Section 504)—disability in programs receiving federal funds. *29 U.S.C. 794*

Title I of the Americans with Disabilities Act of 1990 (ADA)—disability. *42 U.S.C. 12101 et seq.*

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)—genetic information. *42 U.S.C. 2000ff et seq.*

Note: Title VII, the ADA, and GINA do not apply to employers unless the employer 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); 42 U.S.C. 12111(5); 42 U.S.C. 2000ff(2)(B)*

State Law

Texas Commission on Human Rights Act (TCHRA)—race, color, disability, religion, sex, national origin, age, and genetic information. *Labor Code 21.051, .402*

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	State policy on employment of persons with disabilities. <i>Human Resources Code 121.003(f)</i>
Discriminatory Practices	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). <u><i>Wards Cove Packing Co. v. Atonio</i></u> , 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
Limited Exception—Bona Fide 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
Prohibition on 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); 42 U.S.C. 12203 (ADA); 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	<p>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.</p> <p>The notice shall state:</p> <ol style="list-style-type: none">1. That the district does not discriminate in employment in its programs and activities; and2. The identity of the district's 504 coordinator.

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Methods of notification may include:

1. Posting of notices;
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

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*

**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*

Unlawful Inquiry into
Religious Affiliation

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*

Sex Discrimination
Pregnancy

The prohibition against discrimination because 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*

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Gay and Transgender	The prohibition against discrimination because of sex includes discrimination on the basis of an individual being gay or transgender. <u><i>Bostock v. Clayton County, Georgia</i></u> , 17-1618, 2020 WL 3146686, (U.S. June 15, 2020)
Gender Stereotypes	A district may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. <u><i>Price Waterhouse v. Hopkins</i></u> , 490 U.S. 228 (1989)
Age Discrimination	The prohibition against discrimination on the basis of age applies only to discrimination against an individual 40 years of age or older. 29 U.S.C. 631; Labor Code 21.101
Bona Fide Employee Benefit Plan	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
Disability Discrimination	<p>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</p> <p>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)</p> <p>[See DIA]</p>
Other Forms of Discrimination	
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]
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, 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 during the case but before the debtor was

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Student Loan
Repayment

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)*

A district that issues a license may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract including by:

1. Denying the person's application for a license or license renewal;
2. Suspending the person's license; or
3. Taking other disciplinary action against the person.

Occupations Code 56.001, .003

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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)*

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">1. Conducting an Internet search on an individual in a way that is likely to result in the District’s obtaining genetic information;2. Actively listening to third-party conversations or searching an individual’s personal effects for the purpose of obtaining genetic information; and3. 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. <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>
Manifested Condition	<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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CREDENTIALS AND RECORDS

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Note: The Board has adopted an [innovation plan](#)¹ that affects application of provisions in this legally referenced policy.

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Notice to Parents

Teacher
Qualifications

As a condition of receiving assistance under Title I, Part A of the Elementary and Secondary Education Act (ESEA) (20 U.S.C. 6301 et seq.), a district shall, at the beginning of each school year, notify the parents of each student attending any school receiving such funds that the parents may request, and the district shall provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following:

1. Whether the student's teacher:
 - a. Has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction;
 - b. Is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived; and
 - c. Is teaching in the field of discipline of the certification of the teacher.
2. Whether the child is provided services by paraprofessionals and, if so, their qualifications.

20 U.S.C. 6312(e)(1)(A)

Federally Required
Notice—Lack of
Credentials

A school that receives such federal funds shall also provide to each individual parent of a child who is a student in such school, with respect to such student, timely notice that the student has been assigned, or has been taught for four or more consecutive weeks by, a teacher who does not meet applicable state certification or licensure requirements at the grade level and subject area in which the teacher has been assigned. *20 U.S.C. 6312(e)(1)(B)(ii)*

State-Required
Notice—Lack of
Credentials

If a district assigns an inappropriately certified or uncertified teacher (as defined below) 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.

A superintendent shall provide the notice not later than the 30th instructional day after the date of the assignment of the inappropriately certified or uncertified teacher. A district shall make a good-faith effort to ensure that the notice is provided in a bilingual form to any parent or guardian whose primary language is not English. A district shall retain a copy of the notice and make information relating to teacher certification available to the public on request.

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An “inappropriately certified or uncertified teacher” includes an individual serving on an emergency certificate or an individual who does not hold any certificate or permit. It does not include an individual who is:

1. Certified and assigned to teach a class or classes outside his or her area of certification, as determined by State Board for Educator Certification (SBEC) rules specifying the certificate required for an assignment;
2. Serving on a certificate issued due to a hearing impairment;
3. Serving on a certificate issued pursuant to enrollment in an approved alternative certification program;
4. Certified by another state or country and serving on a certificate issued under Education Code 21.052;
5. Serving on a school district teaching permit; or
6. Employed under a waiver granted by the commissioner of education.

The state notice requirement does not apply if a school is required in accordance with Section 1006, Every Student Succeeds Act [20 U.S.C. Section 6312(e)(1)(B)(ii)], to provide notice to a parent or guardian regarding a teacher who does not meet certification requirements at the grade level and subject area in which the teacher is assigned, provided the school provides notice as required by that Act. [See Federally Required Notice—Lack of Credentials, above]

Education Code 21.057; 19 TAC 231.1

**Professional
Personnel**

Certificate

A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a district unless the person holds an appropriate certificate or permit. A person who desires to teach shall present the person’s certificate for filing with a district before the person’s contract with a board is binding.

A person is not required to hold a certificate under Education Code 21.0487 to be employed by a district as a Junior Reserve Officer Training Corps instructor.

An educator who does not hold a valid certificate may not be paid for teaching or work done before the effective date of issuance of a valid certificate.

Education Code 21.003(a), .0487(d), .053(a)–(b)

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License	<p>A person may not be employed by a district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, licensed professional counselor, marriage and family therapist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession. A person may perform specific services within those professions for a district only if the person holds the appropriate credentials from the appropriate state agency.</p> <p>A person employed by a district before September 1, 2011, to perform marriage and family therapy is not required to hold a license as a marriage and family therapist as long as the person remains employed by the district.</p> <p><i>Education Code 21.003(b)</i></p>
School District Teaching Permit	<p>A district may issue a school district teaching permit and employ as a teacher a person who does not hold a teaching certificate issued by SBEC. To be eligible for a school district teaching permit, a person must hold a baccalaureate degree. <i>Education Code 21.055(a)–(b)</i></p>
Statement to Commissioner	<p>Promptly after employing a person under a school district permit, a district shall send a written statement to the commissioner. This statement must identify the person, the person's qualifications as a teacher, and the subject or class the person will teach. The person may teach the subject or class pending action by the commissioner.</p> <p>Not later than the 30th day after the commissioner receives a district's statement, the commissioner may inform the district that the person is not qualified to teach. The person may not teach if the commissioner finds that the person is not qualified. If the commissioner fails to act before the 30th day after receiving the statement, a district may issue the school district teaching permit and the person may teach the subject or class identified in the statement sent to the commissioner.</p> <p><i>Education Code 21.055(c)–(d)</i></p>
Noncore Career and Technical Courses	<p>The following requirements do not apply to a person who will teach only noncore academic career and technical education courses:</p> <ol style="list-style-type: none">1. The requirement to hold a baccalaureate degree;2. The requirement that the district send a written statement to the commissioner identifying the person, the person's qualifications as a teacher, and the subject or class the person will teach; and

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3. The requirement that the commissioner inform the district in writing if the commissioner finds the person to be not qualified to teach.

A board may issue a school district teaching permit to a person who will teach courses only in career and technical education based on qualifications certified by the superintendent. Qualifications must include demonstrated subject matter expertise such as professional work experience, formal training and education, holding an active professional relevant industry license, certification, or registration, or any combination of work experience, training and education, or industry license, certification, or registration, in the subject matter to be taught.

The superintendent shall certify to the board that a new employee has undergone a criminal background check and is capable of proper classroom management. A district shall require a new employee to obtain at least 20 hours of classroom management training and to comply with continuing education requirements as determined by the board.

A person may teach a career and technical education course immediately upon issuance of a permit. Promptly after employing a person who qualifies under Education Code 21.055(d-1), the board shall send to the commissioner a written statement identifying the person, the course the person will teach, and the person's qualifications to teach the course.

Education Code 21.055(d-1)

Duration of Permit

A school district teaching permit remains valid unless the district issuing the permit revokes it for cause. A person authorized to teach under a school district teaching permit issued by a particular district may not teach in another school district unless that other district complies with the permit-issuing provisions. *Education Code 21.055(e)*

Emergency Permit

Emergency permits are issued under the authority of SBEC. 19 TAC 230.71(a)

Activation

A superintendent or designee who cannot secure an appropriately certified and qualified individual to fill a vacant position may activate an emergency permit for an individual who does not have one of the appropriate credentials for the assignment, as specified in 19 Administrative Code Chapter 231 (Requirements for Public School Personnel Assignments).

In order to activate an emergency permit, the superintendent or designee must:

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1. Document locally the efforts the district has taken to employ an appropriately certified individual in the position for which an emergency permit is activated;
2. Apply for an emergency permit when a vacant position is filled with an uncertified or inappropriately certified individual who will serve as the teacher of record or will serve in the assignment for more than 30 consecutive instructional days. The application must be submitted to the Texas Education Agency (TEA) within 45 instructional days of the date of assignment;
3. Verify that the district maintains a support system, has assigned a trained mentor, and will provide release time as needed to assist the individual serving on an emergency permit. However, a district shall not be required to provide a mentor for a degreed, certified teacher assigned on an emergency permit if the teacher has one or more creditable years' experience within the district, as defined at 19 Administrative Code Chapter 153, Subchapter CC; and
4. Verify that the individual for whom the emergency permit is activated has been advised of the SBEC rules regarding permits and permit renewal requirements in 19 Administrative Code Chapter 230, Subchapter F.

19 TAC 230.71(d)

*Temporary
Vacancies*

A district is not required to activate an emergency permit if an uncertified individual is assigned for a certified teacher who will be absent for more than 30 consecutive instructional days due to documented health-related reasons and has expressed the intention to return to the assignment. A district must, however, comply with the parent notification requirements above. *19 TAC 230.71(i)*

General Eligibility
Requirements

An individual for whom an emergency permit is activated must meet the following criteria:

1. The individual must hold a bachelor's degree or higher from an accredited institution of higher education. [See 19 Administrative Code 230.75(1) for career and technical and trade and industrial education assignments.]
2. The individual must be at least 18 years of age.
3. The individual must be able to communicate and understand the English language sufficiently to use it easily and readily in daily communication and teaching, as specified in 19 Administrative Code 230.11 (General Requirements).

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4. The individual must be of good moral character. SBEC may refuse to authorize an emergency permit for an individual, applying the same standards that would be applied to the administrative denial of an applicant for certification under 19 Administrative Code 249.12 (Administrative Denial; Appeal).
5. The individual must submit fingerprints in accordance with 19 Administrative Code 232.35(c) (Submission of Required Information) and Education Code 22.0831. [See DBAA]

19 TAC 230.75

Specific
Requirements for
Initial Permits

An individual for whom an emergency permit is activated must:

1. Have completed the appropriate semester credit hours or equivalent contact hours required for the emergency permit sought as specified in 19 Administrative Code 230.77, or, for a degreed, certified teacher, have passed the appropriate content specialization portions of the appropriate certification examination required for the target certificate; and
2. Have satisfied the appropriate experience requirement specified in 19 Administrative Code 230.77 for the emergency permit sought.

19 TAC 230.77(a)

SBEC rules provide requirements for the following assignments:

1. Elementary grades (early childhood–grade 6) (general education).
2. Secondary grades (grades 7–12) (general education).
3. All grade levels (early childhood–grade 12) (general education).
4. Career and technical education programs.
5. Special populations, such as English language learners (ELLs) and students with special learning needs.
6. Other instructional and support personnel, such as school counselor, educational diagnostician, school librarian, and JROTC instructor.

19 TAC 230.77 (b)–(g)

*Hardship
Exception*

An emergency permit may be authorized on a hardship basis for an individual who does not meet all eligibility requirements only if approval has been granted and email notification received from TEA staff. The district must:

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1. Document local conditions requiring the assignment of an individual who does not meet emergency permit requirements;
2. Verify that the deficiencies for the certificate sought do not exceed 36 semester credit hours; and
3. Verify:
 - a. That the individual will be enrolled in the first available course listed on the certification plan; or
 - b. Registration for the next available administration of the appropriate content specialization portion of the certification examination for an individual who holds a valid Texas classroom teaching certificate and a bachelor's degree or higher from an accredited institution of higher education and is placed in an assignment requiring a different classroom teaching certificate.

19 TAC 230.71(h)

*Holders of Intern
or Probationary
Certificates*

Candidates who hold an intern certificate under the provisions of 19 Administrative Code 230.36 (Intern Certificates) or a probationary certificate under 19 Administrative Code 230.37 (Probationary Certificates) may be employed on an emergency permit during the validity of the intern certificate or probationary certificate, if the emergency permit is being issued in a certificate area not available through the educator preparation program that provided recommendation for the intern certificate or probationary certificate. *19 TAC 230.71(j)*

Procedures for
Initial Permit

The superintendent or his or her designee or authorized representative must verify the individual's eligibility for the emergency permit [see General Eligibility Requirements and Specific Requirements for Initial Permits, above] and submit online to TEA the following information within 45 instructional days of assignment.

For all assignments (except career and technical education assignments based on skill and experience):

1. A completed online emergency permit application;
2. One of the following:
 - a. A certification plan from an approved Texas educator preparation program (EPP); or
 - b. Verification of registration for an appropriate certification examination for a teacher that is already certified; and
3. The appropriate fee (payable by the school district).

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For career and technical education assignments based on skill and experience:

1. A completed online emergency permit application;
2. A copy of the individual's statement of qualifications, approved by the certification officer of a Texas EPP;
3. Acceptable license, registration, or certification by a state-authorized or nationally recognized agency in an occupational area appropriate for the assignment;
4. A certification plan from an approved Texas EPP for the career and technical education certificate appropriate for the assignment; and
5. The appropriate fee (payable by the school district).

19 TAC 230.79

Validity of
Emergency Permit

The validity date of an activated and authorized emergency permit is specified in 19 Administrative Code 230.97 (Effective Dates of Certificates and Permit Issuance).

An emergency permit is valid for the remainder of the school year for which it is activated and authorized by SBEC. The emergency permit must be submitted to TEA within 45 instructional days from the date of assignment. A permit authorized by SBEC is valid for service only in the requesting district and only for the assignments indicated on the emergency permit application.

Effective with the 2017–18 school year, the employment of an individual on an emergency permit, with the exception of the assignment as a JROTC instructor or a teacher of students with visual impairments may not exceed one school year in the same assignment. [See One-Year Limitation, below]

Prior to the 2017–18 school year, the individual may serve in a specific assignment no more than one additional school year beyond the initial emergency permit. To continue beyond the initial emergency permit year, the individual must comply with the renewal provisions specified in 19 Administrative Code 230.81. [See Renewal Requirements and Procedures, below]

Effective with the 2017–18 school year, to continue employment in the assignment beyond the validity of the initial emergency permit, the individual must hold the appropriate certificate, in accordance with 19 Administrative Code, Chapter 231 (Requirements for Public School Personnel Assignments). An individual may not serve as a

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classroom teacher of record in the district for more than three school years without obtaining initial, standard certification.

19 TAC 230.73

One-Year Limitation Effective with the 2017–18 school year, an emergency permit will limit an individual to one year of service and no renewal will be allowed.

Exceptions The one-year limitation does not apply to individuals serving in the position of Junior Reserve Officer Training Corps (JROTC) instructor or teachers of students with visual impairments.

As indicated in 19 Administrative Code 230.77(g)(4)(B), emergency permits for JROTC instructors must be reissued every year.

Emergency permits for teachers of students with visual impairments referenced in 19 Administrative Code 230.77(f)(2)(B) may be renewed a maximum of two years.

19 TAC 230.71(b), (c)

Renewal Requirements and Procedures Effective with the 2017–18 school year, these renewal provisions no longer apply for emergency permits, with the exception of teachers of students with visual impairments. *19 TAC 230.73(f)*

A superintendent, designee, or authorized representative may renew an emergency permit for the same assignment in the same district for which the initial emergency permit was activated.

No individual may continue in the same assignment for more than one school year of service on an emergency permit, except that emergency permits used fewer than 90 calendar days may be renewed for one additional year of service, if needed.

The total of semester credit hours or the equivalent contact hours required to obtain certification appropriate for the assignment shall determine the number of emergency permit renewals for which the individual may be eligible.

For six semester credit hours or less plus appropriate examination requirements, an individual is not eligible for renewal.

For seven semester credit hours or more plus appropriate examination requirements, an individual is eligible for one renewal.

The superintendent or his or her designee or authorized representative may renew an emergency permit provided the following requirements and procedures are met:

1. The emergency permit must be renewed for the same assignment in the same school district.

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2. Official transcripts verifying completion of a minimum of six semester credit hours or documentation of completion of equivalent contact hours toward the appropriate target certificate must be placed in the individual's personnel file.
3. If the individual has not completed permit renewal requirements as indicated above, the superintendent or his or her designee must obtain hardship approval from the TEA prior to continuation of the assignment.
4. The appropriate renewal of the emergency permit application must be completed online prior to the beginning date of duties for the current school year.
5. The school district shall pay the appropriate fee.

19 TAC 230.81

Nonrenewable
Permits

A superintendent or designee may activate a nonrenewable permit for an individual who has not completed the appropriate examination requirements specified in 19 Administrative Code 230.21 (Educator Assessment).

A nonrenewable permit may be activated for an individual who:

1. Has completed all course and degree requirements of a Texas EPP except for successful completion of all appropriate examination requirements. Nonrenewable permits activated for individuals in this category expire 12 months from the date of activation; or
2. Holds a Texas teacher certificate with an effective date before February 1, 1986, but has not revalidated the certificate for employment purposes by passing an examination. The individual must not have been employed in a Texas school district since the start of the 1985–86 school year. A nonrenewable permit activated for an individual in this category expires six months from the date of activation or at the end of the school year, whichever is less.

A nonrenewable permit may not be activated for an individual in the same assignment area for which another permit had previously been authorized.

The superintendent, designee, or authorized representative must verify that an individual is eligible for the permit and submit the following information within 45 calendar days of assignment:

1. An application for a nonrenewable permit completed before the effective date of the assignment; and

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2. The appropriate fee (payable by the district).

19 TAC 230.83

Educator Consent

A certified teacher must consent to the activation of an emergency permit and be advised of the conditions of the emergency permit.

A teacher who refuses to consent to activation of an emergency permit may not be terminated or nonrenewed or otherwise retaliated against because of the teacher's refusal to consent to the activation of the emergency permit. However, a teacher's refusal to consent shall not impair a district's right to implement a necessary reduction in force or other personnel actions in accordance with local policy.

19 TAC 230.71(e)

No Property Right

An emergency permit is authorized for the district for a specific assignment and is not the property of the individual for whom the emergency permit was activated. *19 TAC 230.71(f)*

Unused Permits

If an emergency permit authorized by SBEC is not used, the district shall notify TEA staff by email. *19 TAC 230.71(g)*

Tutoring Program

A person may participate in a tutoring program to provide supplemental instruction to students in kindergarten through grade 12 on an individualized or small-group basis.

Eligibility

To participate in the program as a tutor, a person must:

1. Be an active or retired teacher;
2. Apply for the position in a manner specified by a nonprofit teacher organization approved by the commissioner for the purpose of participating in the tutoring program;
3. Designate in the application whether the person plans to provide tutoring:
 - a. For compensation, on a volunteer basis, or both; and
 - b. In person, online, or both; and
4. Not be included in the Do Not Hire Registry. [See DBAA]

If an active or retired teacher who has been approved for participation in the tutoring program contacts a school district to provide tutoring to students in the district and the district needs tutoring assistance, the district may:

1. If the teacher is providing tutoring services on a volunteer basis, use the volunteer tutoring services provided by the teacher; or

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	<ol style="list-style-type: none">2. If the district has local, state, or federal funds for purposes of the tutoring program and the teacher is providing tutoring services for compensation, employ the teacher as a tutor.
Local Oversight and Reporting	<p>The superintendent or designee shall:</p> <ol style="list-style-type: none">1. Oversee the tutoring program within the district; and2. Not later than the last day of each semester, submit a report to the board that includes, with respect to that semester:<ol style="list-style-type: none">a. The number of active or retired teachers who contacted the district to offer tutoring services to students in the district; andb. The number of active or retired teachers who were used by the district as a tutor on a volunteer basis or employed by the district to provide tutoring services for compensation.
Funding	<p>A school district may use any available local, state, or federal funds to provide compensation to a person participating in the program as a tutor who is providing tutoring for compensation under the program.</p> <p><i>Education Code 33.913</i></p>
Certification of Paraprofessional Employees	<p>Educational aides shall be certified according to standards established by SBEC. <i>19 TAC 230.51</i></p>
Federal Requirements for Teachers and Paraprofessionals	<p>Teachers and paraprofessionals working in a program supported with funds under Title I, Part A of the Elementary and Secondary Education Act (20 U.S.C. 6301 et seq.) shall meet applicable state certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification. <i>20 U.S.C. 6311(g)(2)(J), 6312(c)(6)</i></p> <p>The state's professional standards for paraprofessionals working in a program supported with Title I funds must include qualifications that were in place under former 20 U.S.C. 6319, as that section existed before December 10, 2015. <i>20 U.S.C. 6311(g)(2)(M)</i></p>
Qualifications Before December 10, 2015	<p>Each district receiving assistance under Title I, Part A of the ESEA shall ensure that all paraprofessionals working in a program supported with those funds shall:</p> <ol style="list-style-type: none">1. Be assigned only duties consistent with the following:<ol style="list-style-type: none">a. A paraprofessional may be assigned to:

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- (1) Provide one-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;
 - (2) Assist with classroom management, such as organizing instructional and other materials;
 - (3) Provide assistance in a computer laboratory;
 - (4) Conduct parental involvement activities;
 - (5) Provide support in a library or media center;
 - (6) Act as a translator; or
 - (7) Provide instructional services to students in accordance with items (b) and (c).
 - b. A paraprofessional may not provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher consistent with this section; and
 - c. A paraprofessional may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under this part, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school.
2. Regardless of a paraprofessional's hiring date, have earned a secondary school diploma or its recognized equivalent.
 3. If hired after January 8, 2002, have one of the following credentials:
 - a. Completed at least two years of study at an institution of higher education;
 - b. Obtained an associate's (or higher) degree; or
 - c. Met a rigorous standard of quality and can demonstrate, through a formal state or local academic assessment:
 - (1) Knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

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- (2) Knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

Receipt of a high school diploma is not sufficient to satisfy the formal academic assessment requirement.

The requirements at item 3, above, shall not apply to a paraprofessional:

1. Who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in programs under Title I, Part A by acting as a translator; or
2. Whose duties consist solely of conducting parental involvement activities.

Former 20 U.S.C. 6319 in effect before Dec. 10, 2015

**Federal
Requirements for
Special Education
Teachers**

Each person employed as a special education teacher who teaches elementary school, middle school, or secondary school must:

1. Have obtained full state certification as a special education teacher [including participating in an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 C.F.R. 2005.56(a)(2)(ii) as in effect November 28, 2008], or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher;
2. Have not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
3. Hold at least a bachelor's degree.

20 U.S.C. 1412(a)(14)(C)

**CPR and First Aid
Certification**

A district employee who serves as head director of a school marching band, head coach, or chief sponsor of an extracurricular athletic activity (including cheerleading) that is sponsored or sanctioned by the district or UIL must maintain and submit to the district proof of current certification in first aid and cardiopulmonary resuscitation issued by the American Red Cross, the American Heart Association, or another organization that provides equivalent training and certification. A district shall adopt, in accordance with its professional development policy [see DMA], procedures for adminis-

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tering this requirement, including procedures for the time and manner in which proof of current certification must be submitted. *Education Code 33.086*

AED Certification

Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other employee specified by the commissioner must receive and maintain certification in the use of an automated external defibrillator (AED) from the American Heart Association, the American Red Cross, or a similar nationally recognized association. *Education Code 22.902(c)* [See DMA]

School Bus Drivers

Credentials

For purposes of the following provisions, a "school bus driver" is a driver transporting school children and/or school personnel on routes to and from school or on a school-related activity trip while operating a multifunction school activity bus, school activity bus, or school bus. *37 TAC 14.1* [See CNA]

At a minimum, to become employed and maintain employment status as a school bus driver, a person must meet the following requirements:

1. Be at least 18 years old.
2. Possess a valid driver's license designating a class appropriate (with applicable endorsement, if commercial driver license) for the gross vehicle weight rating and manufacturer's designed passenger capacity of the vehicle to be operated.
3. Meet the medical qualifications specified by the Department of Public Safety (DPS) at 37 Administrative Code 14.12. [See DBB]
4. Maintain an acceptable driving record in accordance with the minimum standards established by the DPS at 37 Administrative Code 14.14.
5. Maintain an acceptable criminal history record, secured from any law enforcement agency or criminal justice agency, and reviewed in accordance with the provisions of Education Code Chapter 22. [See DBAA]
6. Possess a valid Texas School Bus Driver Safety Training Certificate, as specified at 37 Administrative Code 14.35 or a valid Enrollment Certificate, as specified at 37 Administrative Code 14.36.

Transp. Code 521.022; 37 TAC 14.11, .12, .14

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Pre-Employment
Inquiries

An applicant for employment as a school bus driver must disclose to the district:

1. Any violations of motor vehicle laws or ordinances (other than parking violations) of which the applicant was convicted or forfeited bond or collateral during the three years preceding the date the application is submitted;
2. Any serious traffic violations, as defined by Transportation Code 522.003(25), of which the applicant was convicted during the ten years preceding the date the application is submitted; and
3. Any suspension, revocation, or cancellation of driving privilege that the applicant has ever received.

The district shall make an inquiry into the applicant's complete driving record, with DPS and with any state in which the applicant held a motor vehicle operator's license or permit within the past seven years. If no previous driving record is found to exist, the district must document its efforts to obtain such information and certify that no previous driving record exists for the individual.

The district shall review the applicant's driving record to determine whether that person meets minimum requirements, as described at 37 Administrative Code 14.14(d) (penalty points for convictions of traffic law violations and crash involvements).

37 TAC 14.14(b)

Annual Evaluation

A district shall, at least once every 12 months, make an inquiry into the complete driving record of each school bus driver it employs, with DPS and with any state in which the individual held a motor vehicle operator's license or permit during that time period. The district shall review the driving record to determine whether the individual meets the minimum requirements described at 37 Administrative Code 14.14(d) (penalty points for convictions of traffic law violations and crash involvements). *Transp. Code 521.022(d); 37 TAC 14.14(c)*

Disqualification

Any person who has accumulated ten or more penalty points shall be considered ineligible to transport students until such time as he or she may become qualified. A school bus driver who receives notice that his or her license, permit, or privilege to operate a motor vehicle has been revoked, suspended, or withdrawn shall notify the district of the contents of the notice before the end of the business day following the day the driver received it. A district shall not permit a disqualified driver to drive a school bus, school activity bus, or multifunction school activity bus. *37 TAC 14.14(g)*

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Employee Records

Professional
Employees

The following records on professional personnel must be readily available for review by the commissioner:

1. Credentials (certificate or license);
2. Service record(s) and any attachments;
3. Contract;
4. Teaching schedule or other assignment record; and
5. Absence from duty reports.

Service Record

The basic document in support of the number of years of professional service claimed for salary increment purposes and both the state's sick and personal leave program data for all personnel is the service record (form FIN-115) or a similar form containing the same information. It is the responsibility of the issuing district to ensure that service records are true and correct and that all service recorded on the service record was actually performed.

The service record must be validated by a person designated by a district to sign service records. The service record shall be kept on file at the district.

*Former
Employees*

On request by a classroom teacher, librarian, school counselor, or nurse or by the school district employing one of those individuals, a district that previously employed the individual shall provide a copy of the individual's service record to the district employing the individual. The district must provide the copy not later than the 30th day after the later of:

1. The date the request is made; or
2. The date of the last day of the individual's service to the district.

The original service record, verified by the employee, shall be given to the employee upon request or sent to the next employing district. A district must maintain a legible copy for audit purposes. A scanned version of the original service record may be considered official if sent directly from one employing district to another employing district.

Education Code 21.4031; 19 TAC 153.1021(b), (d)

Access to
Employee Records

With regard to public access to information in personnel records, custodians of such records shall adhere to the requirements of the Public Information Act. *Gov't Code Ch. 552* [See GBA]

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Information in a personnel file is excepted from the requirements of the Public Information Act if the disclosure would constitute a clearly unwarranted invasion of personal privacy.

Except as provided below, an employee of a district shall choose whether to allow public access to information in the district's custody that relates to the employee's home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members.

Gov't Code 552.024, .102(a)

The social security number of an employee of a district in the custody of the district is confidential. A district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number. *Gov't Code 552.024(a-1), .147(a-1)*

*Employee Right
of Access*

All information in the personnel file of a district employee shall be made available to that employee or the employee's designated representative as public information is made available under the Public Information Act. An employee or an employee's authorized representative has a special right of access, beyond the right of the general public, to information held by a district that relates to the employee and that is protected from public disclosure by laws intended to protect the employee's privacy interests.

A district may not deny to the employee or his or her representative access to information relating to the employee on the grounds that the information is considered confidential by privacy principles under the Public Information Act. A district may assert as grounds for denial of access other provisions of the Public Information Act or other laws that are not intended to protect the employee's privacy interests.

If a district determines that information in the employee's records is exempt from disclosure under an exception of Government Code Chapter 552, Subchapter C, other than an exception intended to protect the privacy interest of the requestor or the person whom the requestor is authorized to represent, it shall submit a written request for a decision to the attorney general before disclosing the information. If a decision is not requested, a district shall release the information to the requestor not later than the tenth day after the request for information is received.

Gov't Code 552.023, .102(a), .307

¹ Innovation Plan: <https://www.myfisd.com/explore-fisd/district-of-innovation>

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Note: This local policy has been revised in accordance with the District's [innovation plan](#).¹

Updating Credentials	<p>All employees who have earned certificates, endorsements, or degrees of higher rank since the previous school year shall file with the District:</p> <ol style="list-style-type: none">1. An official college transcript showing the highest degree earned and date conferred.2. Proof of the certificate or endorsement.
Contract Personnel	<p>The Superintendent or designee shall ensure that contract personnel possess valid credentials before issuing contracts.</p>
State Certification	<p>In accordance with the District's innovation plan, the District is exempt from the state law that generally requires school districts to hire teachers who are certified by the State Board for Educator Certification. State certification shall not be required for teachers of certain specified courses, including career and technical education (CTE) courses and dual credit courses. In addition, the Superintendent shall have the authority to permit a certified teacher to teach outside his or her certified field(s). All other teaching assignments shall require certification in accordance with state law. [See DK]</p>
Social Security Number	<p>The District shall not use an employee's social security number as an employee identifier, except for tax purposes [see DC]. In accordance with law, the District shall keep an employee's social security number confidential.</p>

¹ Innovation Plan: <https://www.myfisd.com/explore-fisd/district-of-innovation>

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**Criminal History
Reviews**

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

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:

Applicability

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 the Texas Education Agency (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)

*Districts of
Innovation*

A prohibition, restriction, or requirement imposed by Education Code Chapter 22, Subchapter C (Criminal History Records) on an

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open-enrollment charter school applies to the same extent to a district of innovation or other charter entity.

The failure of a district of innovation to provide information required under Education Code 22.0832 may result in termination of the district's designation as a district of innovation. [See AF]

Education Code 22.0815

Substitute Teachers	This section applies to a person who is a substitute teacher for a district or shared services arrangement.
<i>Applicability</i>	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.
<i>Information to DPS and TEA</i>	<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">1. May not be hired or must be discharged as provided by Education Code 22.085; or2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.
<i>Employment Pending Review</i>	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.
<i>Criminal History</i>	<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>
Student Teachers	This section applies to a person participating in an internship consisting of student teaching to receive a teaching certificate.
<i>Applicability</i>	
<i>Criminal History</i>	<p>A student teacher may not perform any student teaching until:</p> <ol style="list-style-type: none">1. The student teacher has provided to a district a driver's license or another form of identification containing the person's

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photograph issued by an entity of the United States government; and

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.

Education Code 22.0835

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

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

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

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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

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.

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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.

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 discharge or refuse to hire an employee or applicant for employment if the district obtains information through a CHRI review that the employee or applicant has been:

1. Convicted of or placed on deferred adjudication community supervision for an offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
2. Convicted of:
 - a. A felony under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed; or
 - b. An offense under the laws of another state or federal law that is equivalent to an offense under item 1 or 2a, above.

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

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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 for employment 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 or placed on deferred adjudication community supervision for 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]

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 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).

Education Code 22.085; 19 TAC 249.15(b)(12), (14) [See DF]

**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.

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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

Do Not Hire Registry

TEA shall develop and maintain an internet portal through which required reports may be confidentially and securely filed and TEA makes available:

1. The registry of persons who are not eligible to be employed in public schools; and
2. Information indicating that a person is under investigation.

Education Code 22.095

TEA shall maintain and make available through its internet portal a registry of persons who are not eligible to be employed by a district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement.

A district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall discharge or refuse to hire a person listed on the registry.

The registry must list:

1. An employee of an open enrollment charter school determined by TEA under Education Code 22.0832 as a person who would not be eligible for educator certification based on their NCHRI;
2. A noncertified person determined by TEA to be not eligible for employment based on the person's CHRI, as provided by Education Code 22.0833 [see DBAA];
3. A person who is not eligible for employment based on CHRI received by TEA under Education Code 21.058(b) indicating that a certified employee is required to register as a sex offender;
4. A person whose certification or permit is revoked by SBEC on a finding that the person engaged in misconduct described by Education Code 21.006(b)(2)(A) or (A-1) [see DHB]; and

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5. A noncertified person who is determined by the commissioner under Education Code 22.094 to have engaged in misconduct described by Education Code 22.093(c)(1)(A) or (B) [see DHC].

Education Code 22.092

**Commercial Driver
License Drug and
Alcohol
Clearinghouse**

The U.S. Department of Transportation (DOT) operates and maintains a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators in order to improve compliance with DOT's alcohol and controlled substances testing program applicable to commercial motor vehicle operators [see DHE] and to enhance the safety of roadways by reducing accidents and injuries involving the misuse of alcohol or use of controlled substances by operators of commercial motor vehicles. *49 U.S.C. 31306a*

Pre-employment
Query Required

A district must not employ a driver subject to controlled substances and alcohol testing under 49 C.F.R. Part 382 to perform a safety-sensitive function without first conducting a pre-employment query of the federal Drug and Alcohol Clearinghouse to obtain information about the driver's previous test results.

Annual Query
Required

A district must conduct a query of the federal Drug and Alcohol Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under 49 C.F.R. Part 382 to determine whether information exists about those employees.

Prohibition

A district may not allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a prohibited test result.

Recordkeeping
Required

A district must retain for three years a record of each query and all information received in response to each query made under this section.

49 C.F.R. 382.701

**Consumer Credit
Reports**

Definitions

"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

"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.

"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or

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evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

“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.

15 U.S.C. 1681a

Obtaining Reports

A district may not procure a consumer report for employment purposes unless:

1. The district has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the consumer report.

Adverse Action

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.

15 U.S.C. 1681b(b)(2)

Address
Discrepancies

“Notice of address discrepancy” means a notice sent to a user by a consumer reporting agency that informs the user of a substantial 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

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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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School Bus Drivers	<p>A person shall not drive a school bus, school activity bus, or multi-function school activity bus unless he or she is physically qualified to do so. Each school bus driver shall undergo and successfully complete an annual physical examination in accordance with the requirements of 49 C.F.R. 391.41 and 391.43, which list those physical and mental conditions for which the medical examiner is directed to disqualify an applicant. A driver shall not operate a school bus, school activity bus, or multifunction school activity bus unless he or she has in his or her possession the original, or photographic copy, of the medical examiner's certificate stating that the driver is physically qualified to drive a school bus, school activity bus, or multifunction school activity bus. <i>Transp. Code 521.022; 37 TAC 14.12</i></p> <p>A person disqualified on the basis of the medical examination may request special consideration in accordance with 37 Administrative Code 14.13.</p>
Definitions	<p>The definitions related to individuals with disabilities and exceptions to those definitions included in policy DAA shall be used in applying and interpreting this policy and any local policy adopted in conjunction with this policy.</p>
Bloodborne Pathogen Control	<p>A district that employs employees who provide services in a public or private facility providing health-care-related services, or who otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps shall comply with the minimum standards set by the Texas Department of State Health Services (TDSHS). This includes a district that operates a public school health clinic.</p>
"Sharp" Defined	<p>A "sharp" is an object used or encountered in a health-care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur.</p>
Exposure Control Plan	<p>The TDSHS has developed an exposure control plan as a model plan to achieve the minimum standards in Health and Safety Code 81.304. The plan is designed to minimize exposure of employees to bloodborne pathogens and includes policies relating to occupational exposure to bloodborne pathogens, training and educational requirements for employees, measures to increase vaccination of employees, and increased use of personnel protective equipment by employees.</p> <p>The TDSHS Bloodborne Pathogens Exposure Control Plan requires a district to:</p>

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1. Develop, review annually, update as necessary, and document its actions regarding a comprehensive exposure control plan appropriate to the district and its particular facilities;
2. Provide, at district expense, personal protective equipment and Hepatitis B vaccinations to affected employees, and if an employee declines to be vaccinated, maintain a record of the employee's written refusal;
3. Provide to affected employees pre-service and annual refresher training as described in the TDSHS Exposure Control Plan;
4. Record all exposure incidents (e.g., "sticks" by needles or other "sharps") in a sharps injury log and report the sharps injury to TDSHS on a standardized form; and
5. Provide a post-exposure evaluation and follow up with an employee who has a sharps injury.

Health and Safety Code 81.301–.306; 25 TAC Ch. 96

Cost of Testing

If certified emergency medical services personnel, an emergency response employee or volunteer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital is accidentally exposed to blood or other body fluids of a patient, the hospital to which the patient is transported shall take reasonable steps to test the patient for hepatitis B, hepatitis C, HIV, or any reportable disease. A district that employs the person, or for which the person works as a volunteer in connection with rendering the assistance, is responsible for paying the costs of the test.

Health and Safety Code 81.095(b)

Genetic Information

Any receipt of genetic information in response to a request for medical information shall be deemed inadvertent if a district uses language such as that at 29 C.F.R. 1635.8(b)(1)(i)(B). 29 C.F.R. 1635.8(b)(1)(i)(A) [See DAB]

**Pre-employment
Inquiries and
Employment
Entrance
Examinations**

A district shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of a disability, except as provided below. However, a district is permitted to make pre-employment inquiries into the ability of an applicant to perform job-related functions, such as asking an applicant to describe or demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. 42 U.S.C. 12112(d)(2); 29 C.F.R. 1630.14(a)

A district may require a medical examination (and/or inquiry) after an offer of employment has been made to a job applicant and prior

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to the beginning of employment duties and may condition the offer on the results of such examination (and/or inquiry), provided all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

The results of an employment entrance medical examination shall be used only to determine the applicant's ability to perform job-related functions.

42 U.S.C. 12112(d)(3); 29 C.F.R. 1630.14(b)

Confidentiality

Information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and shall be treated as confidential medical records. However, supervisors and managers may be informed regarding necessary restrictions on the employee's work or duties and necessary accommodation; first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment. *29 C.F.R. 1630.14(b), (c)*

Examination During Employment

The district may require a medical examination (and/or inquiry) of an employee that is job related and consistent with business necessity and may make inquiries into the ability of an employee to perform job-related functions.

Placement on Temporary Disability

The board may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the board's judgment and 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. Such a policy must reserve to the educator the right to present to the board testimony or other information relevant to the educator's fitness to continue the performance of regular duties. [See also DEC]

The results of an employee's medical examination shall be used only to determine the employee's ability to perform job-related functions.

42 U.S.C. 12112(d)(3)–(4); 29 C.F.R. 1630.14(c); Education Code 21.409(c)

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**Examinations During
Employment**

The Superintendent or designee may require an employee to undergo a medical examination if information received from the employee, the employee's supervisor, or other sources indicates the employee has a physical or mental impairment that:

1. Interferes with the employee's ability to perform essential job functions; or
2. Poses a direct threat to the health or safety of the employee or others. A communicable or other infectious disease may constitute a direct threat.

The District may designate the physician to perform the examination. If the District designates the physician, the District shall pay the cost of the examination. The District may place the employee on paid administrative leave while awaiting results of the examination and evaluating the results.

Based on the results of the examination, the Superintendent or designee shall determine whether the employee has an impairment. If so, the Superintendent or designee shall determine whether the impairment interferes with the employee's ability to perform essential job functions or poses a direct threat. If not, the employee shall be returned to his or her job position.

If the impairment does interfere with the employee's ability to perform essential job functions or poses a direct threat, the Superintendent or designee shall determine whether the employee has a disability and, if so, whether the disability requires reasonable accommodation, including the use of available leave. The granting of additional unpaid leave may be a reasonable accommodation in some circumstances. If the employee does not have a disability, the Superintendent or designee shall evaluate the employee's eligibility for leave. [See DEC(LOCAL)]

[See DAA for information on disabilities and reasonable accommodation]

**Placement on
Temporary Disability**
At Employee's
Request

The Superintendent or designee shall have authority to place an eligible employee on temporary disability leave at the employee's request, as appropriate, when the employee's condition interferes with the performance of regular duties.

By Board Authority

Based on the Superintendent's recommendation that an eligible employee be involuntarily placed on temporary disability leave, the Board shall place an employee on temporary disability leave if the Board determines, in consultation with the physician who per-

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES

DBB
(LOCAL)

formed the medical examination, that the employee's condition interferes with the performance of regular duties. [For employees who are eligible for temporary disability leave, see DEC(LOCAL)]

In accordance with DGBA, an employee may file a complaint disputing placement on temporary disability leave. As part of the complaint process, the employee may present testimony or other relevant information to the Board regarding the employee's fitness to perform regular duties.

Other Requirements

Employees with communicable diseases shall follow recommendations of public health officials regarding contact with students and other employees. Food service workers shall comply with health requirements established by city, county, and state health authorities. Bus drivers shall comply with legal requirements. [See DBA]

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DBD
(LEGAL)

**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:

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
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DBD
(LEGAL)

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*

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(LEGAL)

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

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
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(LEGAL)

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

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
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(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)*

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
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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)*

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

**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)*

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

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(LOCAL)

Note: For conflicts of interest and gifts and gratuities related to federal grants and awards, see CB and CBB.

**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.

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**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.

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

DBE
(LEGAL)

Definition In this policy, the term “appoint” includes appointing, confirming the appointment of, and voting to appoint or confirm the appointment of a person.

Nepotism Prohibited Except as provided by this policy, a public official may not appoint a person to a position that is to be directly or indirectly compensated from public funds or fees of office if:

1. The person is related to the public official by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree [see below]; or
2. The public official holds the appointment or confirmation authority as a member of a local board and the person is related to another member of the board by blood or marriage within a prohibited degree.

Gov’t Code 573.002, .041; Atty. Gen. Op. JC-184 (2000)

Independent Contractor The nepotism law governs the hiring of an individual, whether the employee is hired as an individual or an independent contractor.
Atty. Gen. Op. DM-76 (1992)

Superintendent
Counties with
Population 35,000
or More In a district located wholly in, or whose largest part is located in, a county with a population of 35,000 or more, if, under the employment policy [see DC], a board delegates to the superintendent the final authority to select district personnel:

1. The superintendent is a public official for purposes of the nepotism prohibitions only with respect to a decision made under that delegation of authority; and
2. Each member of the board remains subject to the nepotism prohibitions with respect to all district employees.

For purposes of this provision, a person hired by a district before September 1, 2007, is considered to have been in continuous employment [see CONTINUOUS EMPLOYMENT, below] and is not prohibited from continuing employment with the district subject to the abstention requirements.

Education Code 11.1513(f)–(h)

Counties with
Population Less
Than 35,000 In a district located wholly in, or whose largest part is located in, a county with a population of less than 35,000, to the extent a board has delegated final hiring authority to a superintendent to select personnel [see DC], the superintendent is a “public official” for purposes of the nepotism laws. *Atty. Gen. Op. GA-123 (2003)* [See BBFB]

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

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**Compensation of
Prohibited Employee**

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible person if the official knows the person is ineligible. *Gov't Code 573.083*

Consanguinity

Two persons are related to each other by consanguinity (blood) if one is a descendant of the other or if they share a common ancestor. An adopted child is considered to be a child of the adoptive parents for this purpose. *Gov't Code 573.022*

An individual's relatives within the third degree by consanguinity are the individual's:

1. Parent or child (first degree);
2. Brother, sister, grandparent, or grandchild (second degree); and
3. Great-grandparent, great-grandchild, aunt or uncle (who is a sibling of a parent of the person), nephew or niece (who is a child of a brother or sister of the person) (third degree).

Gov't Code 573.023(c)

Half-Blood
Relatives

There is no distinction under the nepotism statute between half-blood and full-blood relations. Thus, half-blood relationships fall within the same degree as those of the full blood. *Atty. Gen. Op. LO-90-30 (1990)*

Affinity

Two persons are related to each other by affinity (marriage) if they are married to each other or if the spouse of one of the persons is related by consanguinity to the other person.

The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of the marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives. This provision applies to a school board member or officer of a school district only until the youngest child of the marriage reaches the age of 21 years.

Gov't Code 573.024

A husband and wife are related to each other in the first degree by affinity. For other relationships, the degree of affinity is the same as the degree of the underlying relationship by consanguinity. For example, if two persons are related to each other in the second degree by consanguinity, the spouse of one of the persons is related to the other person in the second degree by affinity.

A person's relatives within the second degree by affinity are:

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

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1. The person's spouse;
2. Anyone related by consanguinity to the person's spouse within the first or second degree; and
3. The spouse of anyone related to the person by consanguinity within the first or second degree.

Gov't Code 573.025

**Effect of Board
Member Resignation**

All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified, i.e., sworn in. Until the vacancy created by a board member's resignation is filled by a successor, the board member continues to serve and have the duties and powers of office, and a relative within a prohibited degree of relationship is barred from employment. *Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), DM-2 (1991), O-6259 (1945)*

Exceptions

Continuous
Employment
("Grandfather
Clause")

The nepotism prohibitions do not apply to the appointment of a person to a position if the person is employed in the position immediately before the election or appointment of the public official to whom the person is related in a prohibited degree and that prior employment is continuous for at least:

1. Thirty days, if the public official is appointed; or
2. Six months, if the public official is elected.

Gov't Code 573.062(a)

Retirees

A teacher who has retired from a full-time, certified teacher position has broken his or her employment with a district and does not qualify for the continuous-employment exception to the nepotism laws. *Atty. Gen. Op. JC-442 (2001)*

For purposes of calculating the appropriate date for the applicability of the continuous-employment exception, a superintendent with final authority to select personnel is an appointed public official. *Atty. Gen. Op. GA-177 (2004)*

Abstention

If an employee continues in a position under this exception, the public official to whom the employee is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, employment, reemployment, change in status, compensation, or dismissal of the employee, if the action applies only to the employee and is not taken regarding a bona fide class or category of employees. *Gov't Code 573.062(b)*

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
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A "change in status" includes a reassignment within an organization, whether or not a change in salary level accompanies the reassignment. *Atty. Gen. Op. JC-193 (2000)*

For an action to be "taken with respect to a bona fide category of employees," the officeholder's action must be based on objective criteria, which do not allow for the preference or discretion of the officeholder. *Atty. Gen. Op. DM-46 (1991)*

Substitute Teacher The nepotism prohibitions do not apply to appointment or employment of a substitute teacher. *Gov't Code 573.061*

Bus Driver
*Counties with
Population Less
Than 35,000* In a district located wholly in, or whose largest part is located in, a county with a population of less than 35,000, the nepotism prohibitions do not apply to an appointment or employment of a bus driver. *Gov't Code 573.061(4)*

Trading A public official may not appoint a person to a position in which the person's services are under the public official's direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

1. The person is related to another public official within the prohibited degree; and
2. The appointment would be carried out in whole or in partial consideration for the other public official's appointing a person who is related to the first public official within a prohibited degree.

Gov't Code 573.044

Federal Funds The rules against nepotism apply to employees paid with public funds, regardless of the source of those funds. Thus, the rules apply in the case of a teacher paid with funds from a federal grant. *Atty. Gen. L.A. No. 80 (1974)*

Penalties An individual who violates the nepotism prohibitions shall be removed from his or her position. *Gov't Code 573.081, .082*

An individual who violates Government Code 573.041 [see NEPOTISM PROHIBITED], 573.062(b) [see CONTINUOUS EMPLOYMENT and ABSTENTION], or 573.083 [see COMPENSATION OF PROHIBITED EMPLOYEE] commits an offense involving official misconduct. *Gov't Code 573.084*

EMPLOYMENT PRACTICES

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(LEGAL)

- Employment Policies** A board shall adopt a policy providing for the employment and duties of district personnel. The policy shall provide that:
1. A board employs and evaluates the superintendent;
 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];
 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];
 4. Notice will be provided of vacant positions [see Posting of Vacancies, below]; and
 5. Each employee has the right to present grievances to the board. [See Grievances, below]

Education Code 11.1513

- Tax Identifier** 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]. *Education Code 11.1514* [See DBA]
- Contract Positions** 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. *Education Code 21.002(c)* [See DCB and DCC]
- Delegation of Authority** 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. *Education Code 11.1513(c)* [For nepotism implications, see BBFB and DBE]
- Availability** A district shall post on its internet website, if the district has a website, the employment policy adopted by the board under Education Code 11.1513(a) and the full text of any regulations referenced in the policy.
- A district shall make available any forms referenced in its employment policy on an intranet website that is maintained by the district and accessible to district employees, or at a district administrative office designated by the district if the district does not maintain an intranet website.

Education Code 11.1513(k)

Internal Auditor	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]
Superintendent Recommendation	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>
Posting of Vacancies	<p>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:</p> <ol style="list-style-type: none">1. Notice of the position by posting the position on:<ol style="list-style-type: none">a. A bulletin board at:<ol style="list-style-type: none">(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; orb. The district's internet website, if the district has a website; and2. A reasonable opportunity to apply for the position. <p><i>Education Code 11.1513(d)</i></p>
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>
Grievances	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

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a 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(i)–(j) [See DGBA]

Transfers

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. *Education Code 11.1513(c)(3)* [See DK]

Contract Employees

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. *Education Code 21.002*

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. *Education Code 5.001(2)*

Minimum 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. *Education Code 21.401(a), (b)*

Proportionate Reduction

If a district anticipates providing less than 180 days of instruction for students during a school year, as indicated by the district's academic calendar, the district may reduce the number of days of service proportionately. A reduction by the district does not reduce an educator's salary. *Education Code 21.401(c-1)*

Commissioner Waiver

The commissioner of education may reduce the number of days of service if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools. A reduction by the commissioner does not reduce an educator's salary. *Education Code 21.401(c), 25.081(b)*

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 PRACTICES

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**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.

EMPLOYMENT PRACTICES

DC
(LEGAL)

	<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>
Donations for Supplemental Educational Staff	<p>A district shall accept from a parent-teacher organization or association recognized by the district a donation designated to fund supplemental educational staff positions at a school campus and spend the donation accepted for the designated purpose at the direction of and within the time period specified by the school campus for which the donation was designated. This provision expires September 1, 2025. <i>Education Code 11.156(c), (d)</i></p>
Social Security Numbers	<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">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;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; or3. 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.
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>

EMPLOYMENT PRACTICES

DC
(LEGAL)

**Employment
Assistance
Prohibited**

Federal Law

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.

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, private school, 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.

EMPLOYMENT PRACTICES

DC
(LEGAL)

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)

EMPLOYMENT PRACTICES

DC
(LOCAL)

Personnel Duties	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.
Posting Vacancies	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.
Applications	<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>
Employment of Contractual Personnel	<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>
Employment of Noncontractual Personnel	The Board delegates to the Superintendent final authority to employ and dismiss noncontractual employees on an at-will basis. [See DCD]
Employment Assistance Prohibited	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
PROBATIONARY CONTRACTS

DCA
(LEGAL)

**Persons Under
Probationary
Contracts**

Except as provided below, each of the following persons shall be employed under a probationary contract when the person is employed by the District for the first time or if the person has not been employed by the District for two consecutive school years subsequent to August 28, 1967:

1. Principal.
2. Supervisor.
3. Classroom teacher.
4. School counselor.
5. Other full-time professional employee who is required to hold a certificate issued under Education Code Chapter 21, Subchapter B [see DK(EXHIBIT)].
6. Nurse.

Exclusions

Education Code Chapter 21, Subchapter C (relating to probationary contracts) does not apply to the Superintendent or a person who is not entitled to a probationary, continuing, or term contract under Education Code 21.002 [see DC(LEGAL) at CONTRACT EMPLOYEES], an existing contract, or District policy.

Education Code 21.101, .102(a)

Exceptions

Rehires

A person who previously was employed as a teacher by the District, and after at least a two-year lapse in District employment returns to District employment, may be employed under a probationary contract. *Education Code 21.102(a)*

*Principal or
Classroom
Teacher*

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 Section 21.102. *Education Code 21.202(b)*

*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

EMPLOYMENT PRACTICES
PROBATIONARY CONTRACTS

DCA
(LEGAL)

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]

Term of Contract

A probationary contract may not be for a term exceeding one school year.

Maximum

A probationary contract may be renewed for two additional one-year periods, for a maximum permissible probationary contract period of three school years, except that the probationary period may not exceed one year for a person who has been employed as a teacher in public education for at least five of the eight years preceding employment by the District.

Exception

A probationary contract period may be extended beyond the third consecutive year of employment if, during the third year of the probationary period, the Board determines that it is doubtful whether a continuing contract or a term contract should be given. If the Board makes such a determination, the District may make a probationary contract for a term ending with the fourth consecutive school year.

Education Code 21.102

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

DCB
(LEGAL)

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]

EMPLOYMENT PRACTICES
CONTINUING CONTRACTS

DCC
(LEGAL)

Applicability

Each person employed under a continuing contract is entitled to continue in the employee's position or a position with the District for future school years without the necessity for annual nomination or reappointment, until such time as the person:

1. Resigns [see DFE];
2. Retires under the Teacher Retirement System;
3. Is released from employment by the District at the end of a school year because of necessary reduction of personnel [see DFCA];
4. Is discharged for good cause [see DFCA];
5. Is discharged for a reason stated in the teacher's contract that existed on or before September 1, 1995, [see DFD]; or
6. Is returned to probationary status under Education Code 21.106 [see DFAC].

Education Code 21.154

**Former
Administrators**

The District may grant to a person who has served as a principal or in another administrative position for which certification is required, at the completion of the person's service in that capacity, a continuing contract if the person qualifies for that position under criteria adopted by the Board. *Education Code 21.155*

EMPLOYMENT PRACTICES
CONTINUING CONTRACTS

DCC
(LOCAL)

**Continuing
Contracts Retained**

Any District employee hired under a continuing contract prior to July 1, 1995, shall remain on a continuing contract in accordance with law.

Policies relating to employment by educator term contract [see DCB and the DFB series] shall not apply to employees on continuing contracts.

EMPLOYMENT PRACTICES
AT-WILL EMPLOYMENT

DCD
(LEGAL)

The employment-at-will doctrine is the law of Texas, under which an employer has no duty to an employee regarding continuation of employment. Jones v. Legal Copy, Inc., 846 S.W.2d 922 [Tex. App.—Houston [1st Dist.] 1993, no writ]

The employment-at-will doctrine places no duties on an employer regarding an employee's continued employment and thus bars contract and tort claims based on the decision to discharge an employee. Sabine Pilot Serv., Inc. v. Hauck, 687 S.W.2d 733 (Tex. 1985)

In Texas, at-will employment is presumed unless shown otherwise. Gonzales v. Galveston Ind. Sch. Dist., 865 F.Supp. 1241 (S.D. Tex. 1994)

Employment for an indefinite term may be terminated at-will and without cause, except as otherwise provided by law. Garcia v. Reeves County, Texas, 32 F.3d 200 (5th Cir. 1994); Irby v. Sullivan, 737 F.2d 1418 (5th Cir. 1984); Winters v. Houston Chronicle Pub. Co., 795 S.W.2d 723 (Tex. 1990)

Exception

An at-will employee cannot be discharged if the sole reason for the discharge was that the employee refused to perform an illegal act. Sabine Pilot Serv., Inc. v. Hauck, 687 S.W.2d 733 (Tex. 1985) [See DG, DGA, DGB for other exceptions]

Nepotism

A superintendent to whom a board has delegated final hiring authority to select personnel is a "public official" with appointment authority for purposes of the nepotism laws. *Atty. Gen. Op. GA-123 (2003)* [See DBE]

Dismissal Procedure

An at-will employment relationship, standing alone without benefit of recognized exception, triggers no due process requirement nor right. Mott v. Montgomery County, 882 S.W.2d 635, 638 (Tex. App.—Beaumont 1994, writ denied)

Termination of employment is a condition of work that is a proper subject for the grievance process. Fibreboard Paper Products Corp. v. National Labor Relations Board, 379 U.S. 203 (1984); Sayre v. Mullins, 681 S.W.2d 25 (Tex. 1984) [See DGBA]

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

EMPLOYMENT PRACTICES
AT-WILL EMPLOYMENT

DCD
(LOCAL)

Personnel not hired under a contract shall be employed on an at-will basis.

[For information regarding contractual employment, see DCA, DCB, DCC, and DCE, as appropriate]

Dismissal

At-will employees may be dismissed at any time for any reason not prohibited by law or for no reason, as determined by the needs of the District. At-will employees who are dismissed shall receive pay through the end of the last day worked.

Appeal of
Employment
Actions

A dismissed employee may appeal the dismissal in accordance with DGBA(LOCAL).

EMPLOYMENT PRACTICES
OTHER TYPES OF CONTRACTS

DCE
(LEGAL)

Note: This policy applies only to employees whose contracts are not governed by Chapter 21 of the Education Code.

**Non-Chapter 21
Contract**

A contract of employment with a district creates a property interest in the position only for the period of time stated in the contract. Such a contract creates no property interest of any kind beyond the period of time stated in the contract. Perry v. Sindermann, 408 U.S. 593 (1972); Bd. of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)

Termination

End of Contract

A board may decide by vote or inaction not to offer any employee on a contract not governed by Chapter 21 of the Education Code further employment with the district beyond the term of the contract for any reason or no reason. Perry v. Sindermann, 408 U.S. 593 (1972); Bd. of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)

Midcontract

An employee may be dismissed for good cause before the completion of the term fixed in his or her contract.

Procedure

Before any employee on a contract not governed by Chapter 21 of the Education Code is dismissed, the employee shall be given reasonable notice of the cause or causes for the termination, set out in sufficient detail to fairly enable him or her to show any error that may exist and the names and the nature of the testimony of the witnesses against him.

Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970)

Hearing

A board may conduct the hearing in open session or in closed session unless the employee requests a public hearing, in which case the hearing shall be open to the public. *Gov't Code 551.074*

Suspension

The employee may be suspended without pay, so long as the suspension is temporary, and the employee receives a due process hearing. Gilbert v. Homar, 524 U.S. 924 (1997)

EMPLOYMENT PRACTICES
OTHER TYPES OF CONTRACTS

DCE
(LOCAL)

**Non-Chapter 21
Contracts**

The District shall employ on non-Chapter 21 contracts, not to be governed by Chapter 21 of the Education Code, the following positions: trainers, information specialist, licensed specialist in school psychology, occupational therapist, speech and language pathologist, and strength and conditioning coach.

**Appeal of
Employment Actions**

An employee may appeal discharge during the contract period in accordance with DCE(LEGAL).

An employee whose contract is not reissued at the end of the contract period may appeal in accordance with DGBA(LOCAL).

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.

School Counselor

"School 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
(LEGAL)

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.

Local Gov't Code 180.007

Increase in Basic
Allotment

During any school year for which the maximum amount of the basic allotment provided under Education Code 48.015(a) or (b) is greater than the maximum amount provided for the preceding school year, a district must use at least 30 percent of the district's increased funding to provide compensation increases to full-time district employees other than administrators as follows:

1. 75 percent must be used to increase the compensation paid to classroom teachers, full-time librarians, full-time school counselors certified under Education Code Chapter 21, Subchapter B and full-time school nurses, prioritizing differentiated compensation for classroom teachers with more than five years of experience; and
2. 25 percent may be used as determined by the district to increase compensation paid to full-time district employees.

"Compensation" includes benefits such as insurance premiums.

Education Code 48.051(c), (d)

COMPENSATION AND BENEFITS
COMPENSATION PLAN

DEA
(LEGAL)

Maintenance of
Salary

An employee who received a salary increase from a district for the 2019–20 school year is, as long as the employee remains employed by the same district and the district is receiving at least the same amount of funding as the amount of funding the district received for the 2019–20 school year, entitled to salary that is at least equal to the salary the employee received for the 2019–20 school year.

This requirement does not apply if the board:

1. Implements a furlough program under Education Code 21.4021 [see Furlough Program, below], a salary reduction under Education Code 21.4022 [see Salary Reduction/Furlough Process, below], and a widespread reduction in salaries under Education Code 21.4032 [see Widespread Salary Reductions, below] in reducing the employee's salary; and
2. Has adopted a resolution declaring a financial exigency for the district under Education Code 44.011. [See CEA]

A reduction in the salary of a district employee described above is subject to the rights granted to the employee under the Education Code.

Education Code 48.051(c-1), (c-2)

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

COMPENSATION AND BENEFITS
COMPENSATION PLAN

DEA
(LEGAL)

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

COMPENSATION AND BENEFITS
COMPENSATION PLAN

DEA
(LEGAL)

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

No Recovery of
Costs

A district is ultimately responsible for payment of the contributions above. A district may not directly or indirectly pass that cost on to the retiree through payroll deduction, by imposition of a fee, or by any other means designed to recover the cost. *Gov't Code 825.4092(f)*

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(e)*

Temporary
Exception

A district is not required to contribute these amounts for a retiree who retired from the retirement system after September 1, 2005, and is employed in a position described by Government Code 824.6021(a) performing duties related to the mitigation of student learning loss attributable to the coronavirus disease (COVID-19) pandemic. This provision expires February 1, 2025. *Gov't Code 825.4092(f)*

**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;

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2. Electronically at the employee's last known email address;
3. Through a flyer included, in writing or electronically, as a pay-roll 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

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)*

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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*

<i>Funding Levels</i>	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 commissioner shall certify the percentage decrease in funding to be provided to the district. <i>Education Code 48.010</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">1. Includes the involvement of the district's professional staff; and

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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.

Public Meeting

A board must hold a public meeting at which the board and district administration present:

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;
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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**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. The Texas Education Agency (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 of education;
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

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submit a plan and grant application may not be appealed to the commissioner.

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;

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2. Approval for the waiver by a vote of a majority of the members of the board;
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

**Local Optional
Teacher Designation
System**

A district may designate a classroom teacher as a master, exemplary, or recognized teacher for a five-year period based on the results from single year or multiyear appraisals [see DNA]. *Education Code 21.3521(a)*

Rules

The commissioner's rules specify the requirements for districts to implement local teacher designation systems, including teacher eligibility, application procedures and the approval process, system expansion and amendments, monitoring and program evaluation, continuing approval and renewal, and funding. *19 TAC 150.1012*

Standards

The commissioner's rules establish performance and validity standards for each local optional teacher designation system that:

1. Must provide a mathematical possibility that all teachers eligible for a designation may earn the designation; and
2. May not require a district to use an assessment instrument adopted under Education Code 39.023 to evaluate teacher performance.

Education Code 21.3521(b); 19 TAC 150.1014

A classroom teacher that holds a National Board Certification issued by the National Board for Professional Teaching Standards may be designated as recognized. *Education Code 21.3521(c); 19 TAC 150.1013*

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Assistance TEA shall develop and provide technical assistance for districts that request assistance in implementing a local optional teacher designation system, including assistance in prioritizing high needs campuses. *Education Code 21.3521(e)*

No Property Right A teacher has no vested property right in a teacher designation assigned under a local optional teacher designation system. A teacher designation is void in the determination that the designation was issued improperly, and the Administrative Procedure Act does not apply to the voiding of a local optional teacher designation. *Education Code 21.3521(f)*

Teacher Incentive Allotment For each classroom teacher with a local optional teacher designation, a district is entitled to an allotment, adjusted by high needs and rural factors, as determined under Education Code 48.112.

A district shall annually certify that:

1. Funds received were used as follows:
 - a. At least 90 percent was used for the compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed; and
 - b. Any other funds were used for costs associated with implementing the local optional teacher designation system, including efforts to support teachers in obtaining designations; and
2. The district prioritized high needs campuses in the district in using funds.

Education Code 48.112(c), (i)

Evaluations TEA shall periodically conduct evaluations of the effectiveness of the local optional teacher designation systems and the teacher incentive allotment and report the results of the evaluations to the legislature. A district that has implemented a local optional teacher designation system or received funds under the teacher incentive allotment shall participate in the evaluations. *Education Code 21.3521(g)*

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;

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

Education Code 21.458(a)

Rules

The commissioner's rules specify the requirements for districts to implement mentor training programs, including program requirements, application approval process, ongoing verification and compliance, allowable expenditures, and program review. *19 TAC 153.1011*

Assignment of
Mentor

To be assigned as a mentor, a teacher must agree to serve as a mentor teacher for at least one school year. The assignment must begin not later than the 30th day of employment of the classroom teacher to whom the mentor teacher is assigned. A district must agree to assign a mentor to a new classroom teacher for at least two school years. *Education Code 21.458(a-1)*

Requirements for
Mentor

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, which the district may allow to be satisfied by completing the commissioner's research-based mentor and induction training program above;
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; and
4. Demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

Education Code 21.458(b)

Training

A district must provide the training program described above to mentor teachers and any appropriate district and campus employees who work with the classroom teacher or supervise the classroom teacher. A district may allow the commissioner's research-based mentor and induction training program to qualify for the district's required training. The training must be completed by the mentor teacher and the district and campus employees before the beginning of the school year. A district shall also provide supplemental training to mentor teachers and employees during the school year. The training must include content related to best mentorship practices. *Education Code 21.458(b-1)*

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Mentoring Sessions A mentor teacher must meet with each classroom teacher assigned to the mentor not less than 12 hours each semester. Observations of the mentor by the classroom teacher being mentored or of the classroom teacher being mentored by the mentor may count toward the 12 hours of meeting time required for the semester.

Unless the district has created a mentoring curriculum as provided below, the mentoring sessions must address the following topics:

1. Orientation to the context, policies, and practices of the school district;
2. Data-driven instructional practices;
3. Specific instructional coaching cycles, including coaching regarding conferences between parents and the classroom teacher;
4. Professional development; and
5. Professional expectations.

Subject to approval by TEA, in determining the topics to be addressed in the mentoring sessions, a school district may create an appropriate curriculum that meets the district needs.

A district must:

1. Designate a specific time during the regularly contracted school day for meetings between mentor teachers and classroom teachers assigned to a mentor; and
2. Schedule release time or a reduced teaching load for mentor teachers and classroom teachers under this section to facilitate mentoring activities, including classroom observations or participation in supportive coaching.

Education Code 21.458(f), (f-1)

Allotment A school district that has implemented a mentoring program is entitled to an allotment to fund the mentoring program and provide stipends for mentor teachers under a formula adopted by the commissioner.

Funding may be used 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

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3. Mentoring support through providers of mentor training.

Education Code 48.114

**Achievement
Academy Stipends**

A stipend received by a teacher who attends a literacy or mathematics achievement 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)*

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)*

Autism Training

A district may provide a salary incentive or similar compensation to a teacher who completes training provided by a regional education service center (ESC) relating to autism. A school district that decides to provide an incentive or compensation shall adopt a policy to implement this section. *Education Code 21.465*

**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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**Duty Weapon and
Badge**

On the death of a peace officer employed by a district, the district shall provide, at no cost, the officer's duty weapon, if any, and badge to the officer's designated beneficiary or, if there is no designated beneficiary, to the officer's estate. A district shall provide peace officers with a form on which they may designate their beneficiaries for this purpose. If a district peace officer dies and is to be buried in the person's uniform, the district shall provide the uniform at no cost. *Gov't Code 615.102--.103*

Survivor Benefits

The following provisions apply to a person employed by a district as a peace officer or in another position listed at Government Code 615.001 and who dies as a result of a personal injury, as defined at Government Code 615.021 and 615.072, sustained in the line of duty.

Notice to ERS

The surviving spouse and children of the deceased employee may be eligible for benefits under Government Code Chapter 615, Subchapter B. Not later than the 30th day after the date of the death of a peace officer or other covered employee that occurs in the performance of duties in the individual's position or as a result of an action that occurs while the individual is performing those duties, a district shall furnish proof of death to the Employees Retirement System (ERS). A district shall furnish any evidence and information required by ERS regardless of whether the district believes the individual's death satisfies eligibility requirements. If a district fails to furnish proof of death as required, the attorney general may use any means authorized by law, including filing suit for a writ of mandamus against the district, to compel compliance. *Gov't Code 615.021, .041*

Continuation of
Health Insurance

The surviving spouse and any dependents of the deceased employee may be entitled to purchase or continue health insurance benefits through the district under Government Code Chapter 615, Subchapter D. A district shall provide written notice to an eligible survivor of the survivor's rights not later than the tenth day after the date of the employee's death. Not later than the 150th day after the employee's death, the district shall send a subsequent written notice by certified mail to any eligible survivor who has not already elected to purchase or continue coverage on or before that date.

If an eligible survivor is a minor child, the district shall also provide notice, at the same time, to the child's parent or guardian unless, after reasonable effort, the parent or guardian cannot be located.

Gov't Code 615.075

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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.

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>
Sick Leave Different from Temporary Disability Leave	<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>
Assault Leave	<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">1. Could be prosecuted for assault; or2. 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.
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**

An employer 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)*

Note: A Texas federal court held that by omitting any reference to governmental entities from Labor Code 52.051, the state legislature intended to exclude governmental entities from the definition of "employer" contained within that section. Therefore, the statute did not waive a county's governmental immunity from liability for claims of retaliatory discharge of an employee for complying with a subpoena. *Alcala v. Texas Webb County*, 620 F. Supp. 2d 795 (S.D. Tex. 2009)

Jury Duty

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 [see DG]. *Education Code 22.006(c)*

**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,

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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, 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

Leave for Peace Officers

Quarantine Leave

A board shall develop and implement a paid quarantine leave policy for peace officers who are employed by the district and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

A paid quarantine leave policy must:

1. Provide that a peace officer on paid quarantine leave receive:
 - a. All employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits for the duration of the leave; and
 - b. Reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation; and
2. Require that the leave be ordered by the person's supervisor or the district's health authority.

A district may not reduce a peace officer's sick leave balance, vacation leave balance, holiday leave balance, or other paid leave

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balance in connection with paid quarantine leave taken in accordance with the district's policy.

Local Gov't Code 180.008

Mental Health
Leave

A district shall develop and adopt a policy allowing the use of mental health leave by peace officers employed by the district who experience a traumatic event in the scope of that employment.

The mental health leave policy must:

1. Provide clear and objective guidelines establishing the circumstances under which a peace officer is granted mental health leave and may use mental health leave;
2. Entitle a peace officer to mental health leave without a deduction in salary or other compensation;
3. Enumerate the number of mental health leave days available to a peace officer; and
4. Detail the level of anonymity for a peace officer who takes mental health leave.

The mental health leave policy may provide a list of mental health services available to peace officers in the area of the district.

Gov't Code 614.015

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); *Continental Coffee Products Co. v. Cazarez*, 937 S.W.2d 444 (Tex. 1996) (workers' compensation claim); *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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**Leave
Administration**

The Superintendent shall develop administrative regulations addressing employee leaves and absences to implement the provisions of this policy.

Definitions

The term "immediate family" is defined as:

Immediate 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, using, or recording leave shall mean the number of hours per day equivalent to the employee's usual assignment, whether full-time or part-time.

School Year

A "school year" for purposes of earning, using, or recording leave shall mean the term of the employee's annual employment as set by the District for 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 to lose compensation from the District. Such conditions typically require prolonged hospitalization or recovery or are expected to result in disability or death. Conditions relating to pregnancy or childbirth shall be considered catastrophic if they meet the requirements of this paragraph.

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

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.

**State Leave
Proration**

If an employee separates from employment with the District before his or her last duty day of the school year or begins employment after the first duty day of the school year, state personal 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 state personal leave the employee used beyond his or her pro rata entitlement for the school year.

Medical Certification

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

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
3. The employee requests FMLA leave for the employee's serious health condition; a serious health condition of the employee's spouse, parent, or child; or for military caregiver leave.

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

State Personal Leave

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

**Nondiscretionary
Use**

Nondiscretionary 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)]

Nondiscretionary use includes leave related to the birth or placement of a child and taken within the first year after the child's birth, adoption, or foster placement.

Discretionary Use

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

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*Request for
Leave*

In deciding whether to approve or deny a request for discretionary use of state personal leave, the supervisor shall not seek or consider the reasons for which an employee requests to use leave. The supervisor shall, however, consider the duration of the requested absence in conjunction with the effect of the employee's absence on the educational program and District operations, as well as the availability of substitutes.

Discretionary use of state personal leave shall not exceed five consecutive workdays. No more than ten leave days may be used each school year.

Local Leave

Each employee shall earn five, six, or seven paid local leave days per school year in accordance with administrative regulations.

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 exempt employee with at least four consecutive years of service in the District, under the following conditions:

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

**Special Child Care
Leave**

Special child care leave for a period of one teaching year shall be available to each contract and exempt employee employed with the District for a period of no less than two consecutive years, under the following conditions:

1. Special child care leave shall be subject to the approval of the Superintendent and the Board.

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2. The District shall not be responsible for compensation for salary or insurance coverage during special 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 special child care leave. The District shall not guarantee employment to a person who takes special child care leave.
4. An employee who takes special child care leave shall not lose accumulated leave under the regular leave policy.
5. An employee shall not be eligible for special child care leave immediately following a special leave of absence.

Bereavement Leave

An employee shall be granted five days of bereavement leave upon the death of a member of the employee's immediate family. Such leave shall be taken with no loss of pay or other paid leave.

Sick Leave Pool

A full-time employee who has exhausted all paid leave as well as any applicable compensatory time, 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 local leave for use by the eligible employee.

The pool shall cease to exist when the employee no longer needs leave for the purpose requested, uses the maximum number of days allowed under a pool, or exhausts all leave days donated to the sick leave pool.

The Superintendent shall develop regulations for the implementation of the sick leave pool that address the following:

1. Procedures to request the establishment of a sick leave pool;
2. The maximum number of days an employee may donate to a sick leave pool;
3. The maximum number of days per school year an eligible employee may receive from a sick leave pool; and
4. The return of unused days to donors.

Appeal

An employee may appeal a decision regarding the establishment or implementation of the District's sick leave pool in accordance with DGBA(LOCAL), beginning with the Superintendent or appropriate administrator.

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Family and Medical Leave	<p>FMLA leave shall run concurrently with applicable paid leave and compensatory time, as applicable.</p> <hr/> <p>Note: See DECA(LEGAL) for provisions addressing FMLA.</p> <hr/>
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>
Combined Leave for Spouses	<p>When 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.</p>
Intermittent or Reduced Schedule Leave	<p>The District shall 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.</p>
Certification of Leave	<p>When an employee requests leave, the employee shall provide certification, in accordance with FMLA regulations, of the need for leave.</p>
Fitness-for-Duty Certification	<p>In accordance with administrative regulations, when 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.</p>
Leave at the End of Semester	<p>When 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.</p>
Temporary Disability Leave	<p>Any full-time employee shall be eligible for temporary disability leave. The maximum length of temporary disability leave shall be 187 instructional days. [See DBB(LOCAL) for temporary disability leave placement and DEC(LEGAL) for return to active duty.]</p> <p>An employee's notification of need for extended absence due to the employee's own medical condition shall be forwarded to the Superintendent as a request for temporary disability leave.</p> <p>The District shall require the employee to use temporary disability leave and paid leave, including any compensatory time, concurrently with FMLA leave.</p> <hr/>
Workers' Compensation	<p>Note: Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation of the District's contribution to health insurance.</p> <hr/>

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	<p>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.</p>
<p>No Paid Leave Offset</p>	<p>The District shall not permit the option for paid leave offset in conjunction with workers' compensation income benefits. [See CRE]</p>
<p>Court Appearances</p>	<p>Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the District and shall not be deducted from the employee's pay or leave balance.</p> <p>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.</p>
<p>Payment for Accumulated Leave Upon Retirement</p>	<p>An employee determined eligible for payment of accumulated leave upon retirement during the 2005–06 school year shall be eligible for payment for accumulated leave according to the conditions of the previous plan.</p> <p>The following leave provisions shall apply to local leave accumulated beginning on the original effective date of this program and prior to the 2006–07 school year.</p> <p>An employee who is retiring from the District under the Teacher Retirement System of Texas (TRS) shall be eligible for payment for local leave accumulated while employed by the District.</p> <p>An employee taking full service retirement shall receive payment for each day of accumulated local leave, to a maximum of the number of workdays for one contract year or the number of duty days specified for the position, as applicable, at a rate established by the Board.</p> <p>An employee taking reduced service retirement shall receive payment for each day of accumulated local leave, to a maximum of 100 days, at a rate established by the Board.</p> <p>If the employee is reemployed with the District, days for which the employee received payment shall not be available to that employee.</p> <p>The rate established by the Board shall be in effect until the Board adopts a new rate. Any changes to the rate shall apply beginning with the school year following the adoption of the rate change.</p>
<p>Neutral Absence Control</p>	<p>If an employee does not return to work after exhausting all available paid and unpaid leave, the District shall provide the employee written notice that he or she no longer has leave available for use. The District shall automatically pursue termination of an employee</p>

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who has exhausted all available leave, regardless of the reason for the absence [see DF series]. The employee's eligibility for reasonable accommodations, as required by the Americans with Disabilities Act [see DAA(LEGAL)], shall be considered before termination. If terminated, the employee may apply for reemployment with the District.

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

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)

Timing

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)

*Incomplete or
Insufficient
Certification*

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.

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.

29 C.F.R. 825.305(c)

*Medical
Certification of
Serious Health
Condition*

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.

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.

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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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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.

**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)

Disaster Leave of
Absence

In addition to the leave of absence above, an employee described above called to state active duty by the governor or another appropriate authority in response to a disaster, as defined by Government Code 418.004, is entitled to a paid leave of absence from the person's duties for each day the person is called to active duty during the disaster, not to exceed seven workdays in a fiscal year. During a leave of absence for a disaster, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. *Gov't Code 437.202(a-1)*

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

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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 employee, 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)*

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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)

COMPENSATION AND BENEFITS
EXPENSE REIMBURSEMENT

DEE
(LEGAL)

Note: For guidance regarding employee expense reimbursement, including per diem reimbursement, and income tax issues, see the *TEA Financial Accountability System Resource Guide*, Section 1.7.4.7 Employee/Board Member Travel and Business Expenses.

For provisions related to reimbursement of expenses for transportation, lodging, subsistence, and related items incurred by employees related to a federally funded grant, see CBB(LEGAL) at Travel Costs.

Travel Services

An employee of a district who is engaged in official business may participate in the comptroller's contract for travel services. *Gov't Code 2171.055(f)*

**Classroom Supply
Reimbursement**

If funds are specifically appropriated or TEA identifies available funds, TEA shall establish a reimbursement program under which TEA provides funds to districts for the purpose of reimbursing classroom teachers who expend personal funds on classroom supplies.

A district shall match any funds provided to the district under the reimbursement program with local funds to be used for the same purpose. A district may not use funds received under the reimbursement program to replace local funds used by the district for the same purpose.

A district shall allow each classroom teacher in the district who is reimbursed under the reimbursement program to use the funds at the teacher's discretion, except that the funds must be used for the benefit of the district's students.

Education Code 21.414

COMPENSATION AND BENEFITS
EXPENSE REIMBURSEMENT

DEE
(LOCAL)

**Prior Approval
Required**

An employee shall be reimbursed for reasonable, allowable expenses incurred in carrying out District business only with the prior approval of the employee's supervisor and in accordance with administrative regulations.

**Documentation
Required**

For any allowable expense incurred, the employee shall submit a statement, with receipts to the extent feasible, documenting actual expenses.

Exception

Expenses for meals associated with authorized overnight travel not related to a state or federal grant shall be paid to employees on a per diem basis. No receipts shall be required for expenses paid on a per diem basis.

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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).

**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)*

**Registry of Persons
Not Eligible for
Employment**

A district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall discharge or refuse to hire a person listed on TEA's registry of persons who are not eligible to be employed. [See DBAA] *Education Code 22.092*

**Discharge of
Convicted
Employees**

A district shall discharge or refuse to hire an employee or applicant for employment if the district obtains information through a criminal history record information (CHRI) review that the employee or applicant has been:

1. Convicted of or placed on deferred adjudication community supervision for an offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
2. Convicted of:
 - a. A felony under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed; or
 - b. An offense under the laws of another state or federal law that is equivalent to an offense under item 1 or 2a, above.

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 the date the person's employment will begin; 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

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when the employee was employed in a public school and on the registry of persons who are not eligible to be employed under Education Code 22.092 [see DBAA], 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 when the person knew or should have known, through a CHRI review, that the employee has been convicted of or placed on deferred adjudication community supervision for 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]

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)

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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;
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

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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:

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]

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**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 relating 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

DF
(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.

**Grounds for
Nonrenewal**

The Board may terminate a term contract for a financial exigency that requires a reduction in personnel. *Education Code 21.211(a)*
[See CEA]

Reasons

The Board shall establish by policy reasons for nonrenewal at the end of a school year. *Education Code 21.203(b)*

Evaluations

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. *Education Code 21.203(a)*

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. *Education Code 21.352(e)*

[See DNA and DNB]

Notice

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.

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.

**Failure to Provide
Timely Notice**

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.

Education Code 21.206

Request for Hearing

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:

1. The date the employee receives hand delivery of the notice of proposed nonrenewal; or
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.

The Board shall provide for a hearing to be held not later than the 15th day after receiving written notice from the employee 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;
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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NONRENEWAL

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(LOCAL)

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.

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](#)

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

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.]

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

Discharge	<p>An employee employed under a continuing contract 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.</p>
Suspension	<p>For good cause as defined above, a district may suspend an employee without pay and for a period not to extend beyond the end of the current school year in lieu of discharge or pending discharge.</p> <p><i>Education Code 21.156</i></p>
Reduction in Force	<p>Continuing contract employees may be released from employment by a district at the end of a school year because of a necessary reduction of personnel.</p> <p>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.</p> <p><i>Education Code 21.157</i></p>
Notice	<p>Before any employee under a continuing contract is discharged, suspended without pay in lieu of discharge, or released because of a necessary reduction in personnel, the employee shall be notified in writing by the board of the proposed action and the grounds for the action. <i>Education Code 21.158(a)</i></p> <p>An employee who is discharged or suspended without pay for actions related to the inability or failure of the employee to perform assigned duties is entitled, as a matter of right, to a copy of each evaluation report or any other written memorandum that concerns the fitness or conduct of the employee, by requesting in writing a copy of these documents. <i>Education Code 21.158(b)</i></p>
Hearing	<p>An employee who desires to protest a proposed suspension or contract termination under Education Code 21.156 or 21.157 must notify the board in writing not later than the tenth day after the date the employee receives notice of the proposed action.</p> <p>An employee who notifies a board within the time prescribed is entitled to:</p> <ol style="list-style-type: none">1. A hearing before an independent hearing examiner under Education Code Chapter 21, Subchapter F [see DFD], if the employee is protesting proposed action to suspend or terminate the employee's continuing contract under Education Code 21.156; or

2. 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, if the employee is protesting proposed action under Education Code 21.157 on the basis of a financial exigency declared under Section 44.011 [see CEA] that requires a reduction in personnel.

Education Code 21.159

**Hearing Not
Requested**

If the employee does not request a hearing within the time prescribed, the board shall take the appropriate action and notify the employee in writing of the action not later than the 30th day after the date the board sent the notice of the proposed action. *Education Code 21.159(c)*

[See DHB regarding circumstances under which a certified employee's termination during the year shall be reported to the State Board for Educator Certification (SBEC).]

Suspension with Pay A continuing 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.

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
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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

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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. <i>Education Code 21.256</i>
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. <i>Education Code 21.255(e)</i>
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. <i>Education Code 21.257</i>
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

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(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;

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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)

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HEARINGS BEFORE HEARING EXAMINER

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**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.

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RESIGNATION

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**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-R8-0206 (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)*

Notice to Teacher

If a district submits a complaint regarding a teacher to SBEC, the district shall promptly notify the teacher of the complaint. The notice must include:

1. The basis of the complaint;

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2. Information regarding how the teacher may contact SBEC;
and
3. A reminder that the teacher should verify that the teacher's
mailing address on file with SBEC is current.

SBEC Actions

Before imposing sanctions against a teacher for abandonment of
contract, SBEC:

1. Must consider any mitigating factors relevant to the teacher's
conduct; and
2. May consider alternatives to sanctions, including additional
continuing education or training.

If a teacher files a written resignation after the 45th day but not
later than the 30th day before the first day of instruction of the fol-
lowing school year, SBEC may not suspend or revoke the
teacher's certificate.

Education Code 21.105(d)–(f), .160(d)–(f), .210(d)–(f)

SBEC shall not pursue sanctions against an educator who is al-
leged 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
from the district. Unless the district and the educator have a
written agreement to the contrary, the effective date of sepa-
ration 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 Educa-
tion 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

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minutes may be submitted within ten calendar days after the next board meeting.

19 TAC 249.14(j)

Good Cause

SBEC may consider the following factors when an educator is reported to have abandoned a contract in violation of Education Code 21.105(c), 21.160(c), or 21.210(c):

1. Serious illness or health condition of the educator or close family member of the educator;
2. Relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator; or
3. Significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment.

Mitigating Factors

SBEC may consider the following factors when seeking, proposing, or making a decision regarding an educator who has abandoned a contract in violation of Education Code 21.105(c), 21.160(c), or 21.210(c):

1. Educator gave written notice to school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
2. Educator assisted school district in finding a replacement educator to fill the position;
3. Educator continued to work until the school district hired a replacement educator;
4. Educator assisted in training the replacement educator;
5. Educator showed good faith in communications and negotiations with school district; or
6. Educator provided lesson plans for classes following educator's resignation.

19 TAC 249.17(d)

Required 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

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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 [see 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:

1. "Nonrenewal" shall mean the termination of a term contract at the end of the contract period.

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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:

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

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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 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 the most recent formal appraisal and, if available, consecutive formal appraisals from more than one year [see DNA] and any other written evaluative information, including disciplinary information, from the last 36 months. If the Superintendent 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.

Superintendent
Recommendation

The Superintendent shall recommend to the Board the nonrenewal or discharge 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 or discharge, as appropriate.

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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).

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].

Notice

The Superintendent shall provide each employee written notice of the proposed nonrenewal or discharge, as applicable. The notice shall include:

1. The proposed action, as applicable;
2. A statement of the reason for the proposed action; and
3. 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 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.

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

Nonrenewal: Term
Contract

An employee receiving notice of proposed nonrenewal of a term contract may request a hearing in accordance with DFBB.

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

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Education Code may request a hearing before the Board or its designee in accordance with DCE.

Final Action

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.

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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.

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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.

REDUCTION IN FORCE
CONTINUING CONTRACTS

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Applicability	This policy shall apply when a necessary reduction of personnel requires the discharge of a continuing contract.
General Grounds	A reduction of personnel may take place when the Superintendent recommends and the Board adopts a resolution declaring a financial exigency [see CEA] or determines another need to reduce personnel on continuing contracts.
Definition	“Discharge” as used in this policy shall mean termination of a contract during the contract period.
Teaching Fields	<p>When a reduction of personnel is to be implemented, the Superintendent shall recommend the teaching fields to be affected.</p> <p>Teaching fields may include, for example:</p> <ol style="list-style-type: none">1. Elementary2. Special education3. Fine arts4. Languages other than English5. Secondary subject areas6. Career and technical education7. District administration8. Campus administration9. Instructional support10. Administrative support11. Auxiliary <p>The Superintendent’s recommendation may address whether any teaching fields should be:</p> <ol style="list-style-type: none">1. Combined or adjusted (e.g., “elementary” and “fine arts” can be combined to identify a teaching field of “elementary fine arts”); and/or2. Applied on a District-wide or campus-wide basis (e.g., “secondary science at [named high school campus]”). <p>The Board shall determine the teaching fields to be affected.</p>
Criteria for Decision	The Superintendent or designee shall apply the following criteria to the employees within an affected teaching field when the reduction of personnel will not result in the discharge of all staff on continuing contracts within the affected teaching field. The criteria are listed in

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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 of personnel. 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. 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.

2. 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.
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 discharge of the identified employees within the affected teaching fields.

Board Vote

After considering the Superintendent's recommendations, the Board shall determine the employees to be proposed for discharge.

Notice

If the Board votes to propose discharge of one or more employees, the Superintendent or designee shall provide each employee written notice of the proposed discharge. The notice shall include:

1. The proposed action;
2. A statement of the reason for the proposed action; and

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3. 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 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.

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 discharge due to financial exigency 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.

An employee receiving notice of proposed discharge due to a necessary reduction of personnel not based on financial exigency may request a hearing in accordance with DFD.

Final Action

Hearing Requested

If the employee requests a hearing, the Board shall take final action after the hearing in accordance with 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 DFBB or DFD, as applicable, and shall notify the employee in writing.

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**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

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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)

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 timelines established by Government Code 554.005 and 554.006.

Gov't Code 554.005, 554.006 [See DGBA regarding grievance procedures]

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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.
Affirmative Defense	<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>
Notice of Rights	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>
Right to Report a Crime	<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.</p> <p><i>Education Code 37.148</i></p>
Protection for Reporting Child Abuse	<p>A district may not suspend or terminate the employment of, discriminate against, or take other adverse employment action against a professional employee who in good faith:</p> <ol style="list-style-type: none">1. Reports child abuse or neglect to:<ol style="list-style-type: none">a. The person's supervisor,b. An administrator of the facility where the person is employed,c. A state regulatory agency, ord. A law enforcement agency; or2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect. <p>"Adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect under Family Code 261.101.</p>

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A person may sue for injunctive relief, damages, or both if the person is suspended or terminated from the person's employment; is discriminated against; or suffers any other adverse employment action.

A district employee who has a cause of action under the provisions at Whistleblower Protection, above, may not bring an action under Protection for Reporting Child Abuse.

Family Code 261.110(a)–(c), (l)

**Protection from
Disciplinary
Proceedings**

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] *Education Code 22.0512(b)*

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]. *Education Code 38.0041(g)*

Use of Physical
Force

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. *Education Code 22.0512(a); Tex. Att'y Gen. Op. GA-0202 (2004)*

Penal Code 9.62 provides that the use of force, other than deadly force, against a person is justified:

1. If the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
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.

Penal Code 9.62

**Failure to Follow
Scope and Sequence**

A district may not penalize a teacher who does not follow a recommended or designated scope and sequence for a subject in the required curriculum under Education Code 28.002(a) in a particular grade level based on the teacher's determination that the teacher's students need more or less time in a specific area to demonstrate proficiency in the essential knowledge and skills for that subject and grade level [see EHAA].

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A district may take appropriate action with respect to a teacher for conduct described above based on documented evidence of a deficiency in classroom instruction obtained through observation or substantiated and documented third-party information.

Education Code 28.0027(b), (c)

**Instructional
Materials and
Technological
Equipment**

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

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.

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.

Education Code 31.104(e); 19 TAC 66.107(c)

**Controversial Topics
in Social Studies
Courses**

For any social studies course in the required curriculum, a teacher may not be compelled to discuss a particular current event or widely debated and currently controversial issue of public policy or social affairs. *Education Code 28.002(h-3)*

Note: For requirements for any social studies course in the required curriculum, including requirements for student discussion, see EMB.

Jury Duty

A district may not discharge, threaten to discharge, intimidate, or coerce any permanent employee because the employee serves as a juror or grand juror, or for the employee's attendance or scheduled attendance in connection with the service, in any court in the United States. An employee who is discharged, threatened with discharge, intimidated, or coerced is entitled to return to the same employment that the employee held when summoned for jury or grand jury service if the employee, as soon as practical after release from jury or grand jury service, gives the employer actual notice that the employee intends to return. *Civ. Prac. and Rem. Code 122.001*

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A district may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against a school district 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 school district shall pay the employee the employee's normal daily compensation [see DEC]. *Education Code 22.006(a), (b)*

**Breaks for Nursing Mothers—
Nonexempt
Employees**

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 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

EMPLOYEE RIGHTS AND PRIVILEGES

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**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

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)

EMPLOYEE RIGHTS AND PRIVILEGES
FREEDOM OF ASSOCIATION

DGA
(LEGAL)

**Political
Participation**

The Board or any District employee may not directly or indirectly require or coerce any teacher to refrain from participating in political affairs in his or her community, state, or nation. *Education Code 21.407(b)*

**Association
Membership**

The Board or any District employee may not directly or indirectly require or coerce any teacher to join any group, club, committee, organization, or association. Education Code Chapter 21 does not abridge the right of an educator to join or refuse to join any professional association or organization. *Education Code 21.407(a), 21.408*

Labor Organizations

An individual may not be denied employment by the District because of the individual's membership or nonmembership in a labor organization. *Gov't Code 617.004*

"Labor organization" means any organization in which employees participate that exists, in whole or in part, to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions. *Gov't Code 617.001*

**Collective
Bargaining
Prohibited**

The Board may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of District employees; nor shall it recognize a labor organization as the bargaining agent for a group of employees. *Gov't Code 617.002*

Strikes Prohibited

District employees may not strike or engage in an organized work stoppage against the District. However, the right of an individual to cease work shall not be abridged if the individual is not acting in concert with others in an organized work stoppage. *Gov't Code 617.003(a), (c)*

Penalties

Any employee who participates in a strike or organized work stoppage shall forfeit all reemployment rights and any other rights, benefits, or privileges he or she enjoys as a result of public employment or former public employment. *Gov't Code 617.003(b)*

EMPLOYEE RIGHTS AND PRIVILEGES
FREEDOM OF ASSOCIATION

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An employee's participation in community, political, or employee organization activities shall be entirely voluntary and shall not:

1. Interfere with the employee's performance of assigned duties and responsibilities.
2. Result in any political or social pressure being placed on students, parents, or staff.
3. Involve trading on the employee's position or title with the District.

Petitions

A petition for any cause may not be circulated on school property without the approval of the Superintendent and/or principal.

**Use of District
Facilities**

Organizations representing professional, paraprofessional, or support employees may use District facilities with prior approval of the appropriate administrator. Other groups composed of District employees may use District facilities in accordance with policy GKD.

EMPLOYEE RIGHTS AND PRIVILEGES
PERSONNEL-MANAGEMENT RELATIONS

DGB
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**Privileges to
Employee
Organizations**

The District may distinguish among associations on the basis of proportionate membership if it ensures that any distinguishing policies and customs are reasonable and not coercive. *San Antonio Federation of Teachers v. San Antonio Indep. Sch. Dist., Comm. of Ed. Dec. 77-R105 (1980)*

EMPLOYEE RIGHTS AND PRIVILEGES
PERSONNEL-MANAGEMENT RELATIONS

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Avenues for communications from District personnel to the administration and Board are an integral part of a successful educational program. The District provides policies and procedures to channel the various aspects and levels of personnel concerns, suggestions, and grievances. The following policies reflect the Board's commitment to facilitate communications with District personnel:

1. The Board recognizes the formation and existence of the Friendswood Advisory Council. It also recognizes that this council is composed of representatives of the teaching and administrative staff of the District and that the Board worked with the founders and organizers of this organization to develop the Friendswood Advisory Council's constitution.

The Board shall work with the Friendswood Advisory Council to carry out the work of this organization as set forth in its aims and purposes. The Friendswood Advisory Council shall consider only issues that affect more than one campus.

2. Policy DGBA(LOCAL) establishes grievance procedures to secure at the first possible administrative level a prompt and equitable resolution to an individual employee's complaint regarding his or her wages, hours, or conditions of employment.
3. If an employee or group of employees has a concern or suggestion which is not a grievance and which pertains to a single campus, they should discuss the issue with their immediate supervisor or principal. If the matter is not resolved in this discussion or if the matter needs additional approval, they have the right to discuss the issue with the appropriate assistant superintendent, the Superintendent, or the Board.

PERSONNEL-MANAGEMENT RELATIONS
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**United States
Constitution**

A 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*

A board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when a 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 a board negotiate or even respond to complaints. However, a 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(c); *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512 (1982) [For legally referenced material relating to Title IX grievance procedures, see FFH(LEGAL).]

PERSONNEL-MANAGEMENT RELATIONS
EMPLOYEE COMPLAINTS/GRIEVANCES

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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, 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

A 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)

A 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

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:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and

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EMPLOYEE COMPLAINTS/GRIEVANCES

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2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the board.

Education Code 11.1513

Grievance Policy

A 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:

1. Violated the law in the workplace; or
2. Unlawfully harassed the employee.

*Telephone
Representation*

If a 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.

Education Code 11.171(a), (c)

Audio Recording

A 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. A district is not required to provide equipment for the employee to make the recording. *Education Code 11.171(b)*

Finality of Grades

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 a district's grading policy applicable to the grade, as determined by the board.

A board's determination is not subject to appeal.

Education Code 28.0214

Open Meetings Act

A board is not required to conduct an open meeting to hear a complaint or charge against an employee. However, a board may not conduct a closed meeting if the employee who is the subject of the hearing requests a public hearing. *Gov't Code 551.074* [See BEC]

Closed Meeting

A board may conduct a closed meeting on an employee complaint to the extent required or provided by law. *Gov't Code 551.082* [See BEC]

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**Record of
Proceedings**

An appeal of a 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 recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

It is a district's responsibility to make and preserve the records of the proceedings before the board. If a 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 a 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>
Freedom from Retaliation	Neither the Board nor any District employee shall unlawfully retaliate against an employee for bringing a concern or complaint.
Whistleblower Complaints	<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>
Complaints Against Supervisors	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.
General Provisions 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	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.
Days	"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."
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.
Level One	<p>Complaint forms must be filed:</p> <ol style="list-style-type: none">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; and2. With the lowest level administrator who has the authority to remedy the alleged problem. <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.

EMPLOYEE RIGHTS AND PRIVILEGES
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**Immunity from
Individual Liability**

The statutory immunity detailed below is in addition to and does not preempt the common law doctrine of official and governmental immunity. *Education Code 22.051(b)*

Professional
Employees

A professional employee of a district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion, except in circumstances where, in disciplining a student, the employee uses excessive force or his or her negligence results in bodily injury to the student.

"Professional employee of a district" includes a superintendent; principal; teacher, including a substitute teacher or a teacher employed by a company that contracts with a district to provide the teacher's services to the district; a supervisor; social worker; school counselor; nurse; teacher's aide; a student in an education preparation program participating in a field experience or internship; a DPS-certified school bus driver, and any other person whose employment requires certification and the exercise of discretion.

*Motor Vehicle
Exception*

Education Code 22.0511 does not apply to the operation, use, or maintenance of any motor vehicle.

Education Code 22.0511(a)–(b), .051; Hopkins v. Spring Indep. Sch. Dist., 736 S.W.2d 617 (Tex. 1987); Barr v. Bernhard, 562 S.W.2d 844 (Tex. 1978)

Individuals

In addition to the immunity described above [at Professional Employees], and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (Coverdell Act). [See Teachers, below] Nothing in Education Code 22.0511(c) shall be construed to limit or abridge any immunity or protection afforded an individual under state law. *Education Code 22.0511(c)*

No Waiver

A district may not, by policy, contract, or administrative directive:

1. Require an employee to waive the employee's immunity from liability under Education Code 22.0511; or
2. Require an employee who acts in good faith to pay for or replace property belonging to a student or other person that the employee possessed because of an act incident to or within the scope of employment. [See DG(LEGAL) at Instructional Materials and Technological Equipment]

Education Code 22.0511(d)

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**Teachers (Coverdell
Act)**

Except as provided in 20 U.S.C. Section 7946(b), no teacher in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if:

1. The teacher was acting within the scope of the teacher's employment or responsibilities to a school or governmental entity;
2. The actions of the teacher were carried out in conformity with federal, state, and local laws (including rules and regulations) in furtherance of efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school;
3. If appropriate or required, the teacher was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice involved in the state in which the harm occurred, where the activities were or practice was undertaken within the scope of the teacher's responsibilities;
4. The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher; and
5. The harm was not caused by the teacher's operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to:
 - a. Possess an operator's license; or
 - b. Maintain insurance.

"Teacher" means:

1. A teacher, instructor, principal, or administrator;
2. Another educational professional who works in a school;
3. An individual member of a school board (as distinct from the board); or
4. A professional or nonprofessional employee who works in a school, and:
 - a. In the employee's job, maintains discipline or ensures safety; or

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- b. In an emergency, is called on to maintain discipline or ensure safety.

20 U.S.C. Sections 7943, 7946(a)

Report of Drug Offenses

A teacher, administrator, or other district employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property any of the following substances:

1. Marijuana or a controlled substance, as defined by the Texas Controlled Substances Act.
2. A dangerous drug, as defined by the Texas Dangerous Drug Act.
3. An abusable glue or aerosol paint, as defined by Health and Safety Code Chapter 485, or a volatile chemical, if the substance is used or sold for the purpose of inhaling its fumes or vapors.
4. An alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Education Code 37.016

Report to Local Law Enforcement

A principal or person designated by the principal is not liable in civil damages for making a good faith report to law enforcement, as required by law, of an activity specified at Education Code 37.015. *Education Code 37.015* [See GRAA]

Child Abuse and Maltreatment

The requirements of Education Code 38.0041 [regarding prevention of abuse and other maltreatment of children, see FFG] are considered to involve an employee's judgment and discretion and are not considered ministerial acts for purposes of immunity from liability under Education Code 22.0511 [see Immunity from Individual Liability, above]. *Education Code 38.0041* [See DG regarding protection from disciplinary proceedings]

Attendance Committee Membership

A member of an attendance committee is not personally liable for any act or omission arising out of duties as a member of an attendance committee. *Education Code 25.092(c)*

Administration of Medication

A district, a board, and its employees shall be immune from civil liability for damages or injuries resulting from the administration of medication to a student in accordance with Education Code 22.052. *Education Code 22.052(a), (b)* [See FFAC]

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**Immunity for Mental
Health First Aid**

A person who has completed a mental health first aid training program offered by a local mental health authority and who in good faith attempts to assist an individual experiencing a mental health crisis is not liable in civil damages for an act performed in attempting to assist the individual unless the act is willfully or wantonly negligent. *Health and Safety Code 1001.206.*

**Immunity for Shelter
Workers**

An officer or employee of a district is not civilly liable for an act performed in the discharge of duty if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster. *Gov't Code 418.006, 431.085*

**Liability for Causing
Exposure to
Pandemic Disease**

A person is not liable for injury or death caused by exposing an individual to a pandemic disease during a pandemic emergency except as provided by Civil Practice and Remedies Code Chapter 148. *Civ. Prac. & Rem. Code 148.003(a)*

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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 emails, 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 email 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

**Public Information
on Private Device**

A current or former board member or employee of a district who maintains public information on a privately owned device shall:

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1. Forward or transfer the public information to the district or a district server to be preserved as provided by Government Code 552.004(a); or
2. Preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under 552.004(a).

Gov't Code 552.004(b) [See GB]

**Loss of Retirement
Annuity for
Conviction of Certain
Felonies**

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.

"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 disabled individual);
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 and may not regulate the manner in which the handgun, firearm, or ammunition is stored in the vehicle, 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, Penal Code 46.03, or other law. [See GKA]

Education Code 37.0815

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**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:

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;

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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 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 and CKE]
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 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 and good moral character. 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, knowingly, or recklessly 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]

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 6, 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 and may be filed through a confidential and secure internet portal developed and maintained 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

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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)

The name of the student or minor is not public information under the Public Information Act. [See GBAA] *Education Code 21.006(h)*

Notice

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. *Education Code 21.006(d); 19 TAC 249.14(d)(3)(B)*

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. *19 TAC 249.14(d)(3)(A)*

**Exception to Notice
Requirements**

A superintendent is not required to notify SBEC or file a report with the board if, before the educator's termination or resignation, the superintendent:

1. Completes an investigation into an alleged incident of misconduct for:
 - a. Abuse or unlawful act with a student or minor; or
 - b. Involvement in a romantic relationship with or solicitation or engagement in sexual contact with a student or minor; and
2. Determines the educator did not engage in the alleged incident of misconduct.

Education Code 21.006(c-2); 19 TAC 249.14(d)

**Policy to Notify
Parents**

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] *Education Code 21.0061*

**Sanctions for Failure
to Report**

SBEC shall determine whether to impose sanctions, including an administrative penalty against a superintendent who fails to file a report. *Education Code 21.006(f); 19 TAC 249.14(d), (h), .15(b)(4)*

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. *Education Code 21.006(i)*

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Criminal Offense	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>
Immunity	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>
Definitions	"Abuse" includes the following acts or omissions:
Abuse	<ol style="list-style-type: none">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;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 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; or4. Sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare. <p><i>19 TAC 249.3(1)</i></p>
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. <i>19 TAC 249.3(44)</i>
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,

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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;
 - 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.

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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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Note: The provisions of this policy apply to a district of innovation under Education Code, Chapter 12A. [See AF]

Definitions

“Abuse” has the meaning assigned by Family Code 261.001(1).

“Employee” means a person who is employed by a school district, district of innovation, charter school, service center, or shared services arrangement and does not hold a certification issued by the State Board for Educator Certification (SBEC) under Education Code, Chapter 21, Subchapter B.

19 TAC 153.1201(b), (d)

**Misconduct of
Noncertified
Employees**

Education Code 22.093 applies to a district employee who does not hold certification issued by SBEC or a school district teaching permit.

**Notice to TEA of
Termination or
Resignation**

A person who serves as the superintendent shall notify the commissioner of education in writing by filing a report within seven business days of the date the person either receives a report from a principal or knew that an employee was terminated or resigned from employment and there is evidence that the employee committed any of the following acts:

1. Abused or otherwise committed an unlawful act with a student or minor; or
2. Was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.

Principal Notification

A person who serves as principal must notify the superintendent no later than seven business days after an employee resigns or is terminated following an alleged incident of misconduct described above.

Investigation

A superintendent shall complete an investigation of an employee if there is reasonable cause to believe the employee may have engaged in misconduct described above, despite the employee's resignation from district employment before completion of the investigation.

Form of Report

The report must include:

1. The name or names of any student or minor who is the victim of abuse or unlawful conduct by an employee;
2. The factual circumstances requiring the report and the subject of the report by providing the following available information:

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- a. Name and any aliases and certificate number, if any, or social security number;
- b. Last known mailing address and home and daytime phone numbers;
- c. All available contact information for any alleged victim or victims;
- d. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
- e. Current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
- f. Involvement by a law enforcement or other agency, including the name of the agency.

The name of the student or minor is not public information under the Public Information Act (PIA).

Notice to the Board and Employee

A superintendent shall notify the board and the employee of the filing of the report.

Immunity

A superintendent or principal who in good faith and while acting in an official capacity files a report or makes a notification is immune from civil or criminal liability that might otherwise be incurred or imposed.

Sanctions for Failure to Report

The commissioner shall refer an educator who fails to file a report to SBEC, which will determine whether to impose sanctions against the educator.

Criminal Offense

A superintendent commits an offense if the superintendent fails to timely file the report with intent to conceal an employee's criminal record or alleged incident of misconduct.

A principal commits an offense if the principal fails to timely provide notice with intent to conceal an employee's alleged incident of misconduct.

An offense under Education Code 22.093(k) is a state jail felony.

Review of District Records

The commissioner may review district records to ensure compliance with the requirement to report misconduct.

Education Code 22.093; 19 TAC 153.1203

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**Solicitation of Sexual
Conduct**

“Solicitation of sexual conduct” means deliberate or repeated acts that can be reasonably interpreted as the solicitation by an employee of a relationship with a student that is sexual in nature. Solicitation of sexual conduct is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate 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 employee of sexual conduct with a student:

1. Behavior, gestures, expressions, or communications with a student that are unrelated to the employee's job duties and evidence a sexual intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the intent of such communications or behavior, include, without limitation:
 - 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 employee attempts to conceal the communications;
 - f. If the employee claims to be counseling a student, the commissioner of education may consider whether the employee's job duties included counseling, whether the employee 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 employee reported the abuse or neglect to the appropriate authorities; and
 - g. Any other evidence tending to show the context of the communications between employee 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;

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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 employee;
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 employee'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; and
12. Any other acts tending to show that the employee solicited sexual conduct with a student.

19 TAC 153.1201(a)

EMPLOYEE STANDARDS OF CONDUCT
SEARCHES AND ALCOHOL/DRUG TESTING

DHE
(LEGAL)

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)

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">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;2. Has a gross vehicle weight rating of 26,001 or more pounds; or3. Is designed to transport 16 or more passengers, including the driver. <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 DOT testing includes:</p> <ol style="list-style-type: none">1. Pre-employment controlled substance tests required under 49 C.F.R. 382.301 [see DBAA];2. Post-accident alcohol or controlled substance tests required under 49 C.F.R. 382.303;3. Random alcohol or controlled substances tests required under 49 C.F.R. 382.305;4. Reasonable suspicion alcohol or controlled substance tests required under 49 C.F.R. 382.307;5. Return-to-duty alcohol or controlled substances tests required under 49 C.F.R. 382.309; or6. Follow-up alcohol or controlled substance tests required under 49 C.F.R. 382.311.
No Refusal	<p>No driver shall refuse to submit to a required DOT 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</i></p>

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Education and
Treatment

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.

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.

49 C.F.R. 40.289

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 the 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 49 C.F.R. Part 382 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:

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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.

For purposes of this requirement, the term "employee" includes applicants for employment subject to pre-employment testing.

Transp. Code 644.251–.252; 49 C.F.R. 40.3

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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]

Note: The following provisions apply to employees who are covered by the federal Department of Transportation (DOT) rules.

**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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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.

Note: The following provisions address the District's drug- and alcohol-testing program.

**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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**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]

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Note: This policy addresses the prohibition against discrimination, harassment, and retaliation with respect to compensation, terms, conditions, or privileges of employment. For legally referenced material relating to the prohibition against discrimination in hiring and discharging employees, see DAA(LEGAL).

For provisions related to harassment of students, including the district's response to sexual harassment as defined by Title IX, see FFH.

**Unlawful
Employment
Discrimination**

It is an unlawful employment practice for a district to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's:

1. Race, color, or national origin;
2. Religion;
3. Sex;
4. Age;
5. Disability; or
6. Genetic information [see DAB].

Federal Law

Section 1981 of the Civil Rights Act of 1866 (Section 1981)—race. *42 U.S.C. 1981*

Title VII of the Civil Rights Act of 1964 (Title VII)—race, color, religion, sex, and national origin. *42 U.S.C. 2000e et seq.*

Age Discrimination in Employment Act of 1967 (ADEA)—age, over 40. *29 U.S.C. 621 et seq.*

Section 504 of the Rehabilitation Act of 1973 (Section 504)—disability in programs receiving federal funds. *29 U.S.C. 794*

Title I of the Americans with Disabilities Act of 1990 (ADA)—disability. *42 U.S.C. 12101 et seq.*

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)—genetic information. *42 U.S.C. 2000ff et seq.*

Note: Title VII, the ADA, and GINA do not apply to employers unless the employer 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); 42 U.S.C. 12111(5); 42 U.S.C. 2000ff(2)(B)*

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State Law	<p>Texas Commission on Human Rights Act (TCHRA)—race, color, disability, religion, sex, national origin, age, and genetic information. <i>Labor Code 21.051, .402</i></p> <p>State policy on employment of persons with disabilities. <i>Human Resources Code 121.003(f)</i></p>
Prohibition on Retaliation	<p>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. <i>29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 42 U.S.C. 12203 (ADA); Labor Code 21.055</i></p>
Harassment-Free Workplace	<p>Harassment on the basis of a protected characteristic is a violation of Title VII. 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. <i>42 U.S.C. 2000e, et seq.; 29 C.F.R. 1604.11(a), 1606.8(a)</i></p>
Sexual Harassment	<p>Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:</p> <ol style="list-style-type: none">1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. <p>Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.</p> <p><i>29 C.F.R. 1604.11(a), (f), (g); Labor Code 21.141</i></p> <p>An employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's 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. <i>Labor Code 21.142</i></p>

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<i>Same-Sex Harassment</i>	Same-sex sexual harassment constitutes sexual harassment. <u><i>Oncale v. Sundowner Offshore Services, Inc.</i>, 523 U.S. 75 (1998)</u>
<i>Criminal Offense—Official Oppression</i>	<p>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.</p> <p>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.</p> <p>"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.</p> <p><i>Penal Code 39.03(a)(3), (b), (c)</i></p>
<i>Unpaid Interns</i>	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. <i>Labor Code 21.1065</i>
<i>Prohibition on Use of Public Funds</i>	A district may not use public money to settle or otherwise pay a sexual harassment claim made against a person who is an elected or appointed member of the board or an officer or employee of the district. <i>Local Gov't Code 180.008</i>
National Origin Harassment	<p>Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitute harassment when this conduct:</p> <ol style="list-style-type: none">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; or3. Otherwise adversely affects an individual's employment opportunities. <p><i>29 C.F.R. 1606.08(b)</i></p>
Severe and Pervasive	<p>Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment. <u><i>Pennsylvania State Police v. Suders</i>, 542 U.S. 129 (2004)</u></p> <p>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</p>

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	words used have sexual content or connotations. <u>Oncale v. Sun-downer Offshore Services, Inc.</u> , 523 U.S. 75 (1998)
Prevention	A district should take all steps necessary to prevent unlawful 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)
Responsibility for Harassment by Third Parties	<p>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)</p> <p>When no tangible employment action is taken, a district may raise the following affirmative defense:</p> <ol style="list-style-type: none">1. That the district exercised reasonable care to prevent and promptly correct any harassing behavior; and2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. <p><u>Burlington Industries, Inc. v. Ellerth</u>, 524 U.S. 742 (1998); <u>Faragher v. City of Boca Raton</u>, 524 U.S. 775 (1998)</p>
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 <i>de minimus</i> (minimal) cost. 42 U.S.C. 2000e(j); 29 C.F.R. 1605.2; Labor Code 21.108
Burden on Free Exercise	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
Sex Discrimination Pregnancy	The prohibition against discrimination because 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

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Gay and Transgender	The prohibition against discrimination because of sex includes discrimination on the basis of an individual being gay or transgender. <u><i>Bostock v. Clayton County, Georgia</i></u> , 17-1618, 2020 WL 3146686, (U.S. June 15, 2020)
Gender Stereotypes	A district may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. <u><i>Price Waterhouse v. Hopkins</i></u> , 490 U.S. 228 (1989)
Age Discrimination	The prohibition against discrimination on the basis of age applies only to discrimination against an individual 40 years of age or older. 29 U.S.C. 631; Labor Code 21.101
Bona Fide Employee Benefit Plan	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
Disability Discrimination	<p>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</p> <p>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)</p>
Discrimination Based on Lack of Disability	The ADA and the TCHRA 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	<p>"Disability" means:</p> <ol style="list-style-type: none">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; or3. Being regarded as having such an impairment. <p>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.</p>

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<i>“Regarded as” Having an Impairment</i>	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 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.
<i>Mitigating Measures</i>	<p>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.</p> <p>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.</p> <p><i>42 U.S.C. 12102(1), (3), (4); 29 C.F.R. 1630.2(g), (j)(1); Labor Code 21.002, .0021</i></p>
Other Definitions	“Physical or mental impairment” means:
<i>Physical or Mental Impairment</i>	<ol style="list-style-type: none">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; or2. 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. <p><i>29 C.F.R. 1630.2(h)</i></p>
<i>Major Life Activities</i>	“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.

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“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, 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)

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“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)*

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

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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 handling 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

Title IX

No person, on the basis of sex, shall be excluded from participation in, denied the benefits of, or be subjected to discrimination by a district receiving federal financial assistance. *20 U.S.C. 1681* [See FB, FFH]

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)*

**Grievance
Procedures**

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*

ADA

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*

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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. <i>34 C.F.R. 106.8(c); North Haven Board of Education v. Bell, 456 U.S. 512 (1982)</i> [For legally referenced material relating to Title IX grievance procedures, see FFH(LEGAL).]
Compliance Coordinators	
Section 504	A district that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with Section 504 of the Rehabilitation Act. The district's Section 504 notification [see DAA] shall also identify the responsible employee so designated. <i>34 C.F.R. 104.7(a), .8(a)</i>
ADA	A district that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA, including any investigation of any complaint communicated to it alleging its noncompliance with the ADA or alleging any actions that would be prohibited by the ADA. The district shall make available to all interested individuals the name, office address, and telephone number of the employee or employees so designated. <i>28 C.F.R. 35.107(a)</i>
ADEA	A district shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Age Discrimination in Employment Act (ADEA), including investigation of any complaints that the district receives alleging any actions that are prohibited by the ADEA. A district shall notify its employees of the identity of the responsible employee by name or title, address, and telephone number. <i>34 C.F.R. 110.25(a), (b)</i>
Title IX	A district must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX, which employee must be referred to as the "Title IX Coordinator." The district must notify applicants for admission and employment, students, parents or legal guardians, employees, and all professional organizations holding professional agreements with the district of the name or title, office address, electronic mail address, and telephone number of the employee(s) so designated. <i>34 C.F.R. 106.8(a)</i>

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Note: This policy addresses discrimination, harassment, and retaliation against District employees. For Title IX and other provisions regarding discrimination, harassment, and retaliation against students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.

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, 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 and is prohibited.
Discrimination	<p>Discrimination against an employee is defined as conduct directed at an employee on the basis of race, color, religion, sex, national origin, age, disability, or any other basis prohibited by law, that adversely affects the employee’s employment.</p> <p>In accordance with law, discrimination on the basis of sex includes discrimination on the basis of biological sex, gender identity, sexual orientation, gender stereotypes, or any other prohibited basis related to sex.</p>
Prohibited Conduct	<p>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.</p> <p>Prohibited conduct also includes sexual harassment as defined by Title IX. [See FFH(LEGAL)]</p>
Prohibited Harassment	<p>Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee’s race, color, religion, sex, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:</p> <ol style="list-style-type: none">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; or3. 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

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practices, accent, skin color, gender identity, or need for workplace accommodation; threatening or intimidating conduct; offensive jokes, name calling, slurs, or rumors; cyberharassment; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.

**Sex-Based
Harassment**

As required by law, the District shall follow the procedures below at Response to Sexual Harassment—Title IX upon a report of sex-based harassment, including sexual harassment, when such allegations, if proved, would meet the definition of sexual harassment under Title IX. [See FFH(LEGAL)]

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:

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, contact, or communication, including electronic communication.

**Reporting
Procedures**

Any 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)]

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<i>ADA / Section 504 Coordinator</i>	Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator. [See DIA(EXHIBIT)]
<i>Superintendent</i>	The Superintendent shall serve as coordinator for purposes of District compliance with all other nondiscrimination laws.
Alternative Reporting Procedures	<p>An employee shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.</p> <p>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.</p>
Timely Reporting	To ensure the District's prompt investigation, reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act.
Notice of Report	<p>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.</p> <p>Any District employee who receives a report of prohibited conduct based on sex, including sexual harassment, shall immediately notify the Title IX coordinator.</p>
Investigation of Reports Other Than Title IX	<p>The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX, see the procedures below at Response to Sexual Harassment—Title IX.</p> <p>The District may request, but shall not require, a written report. If a report is made orally, the District official shall reduce the report to written form.</p>
Initial Assessment	Upon receipt or notice of a report, the District official shall determine whether the allegations, if proved, would constitute prohibited conduct as defined by this policy. If so, the District shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.
Interim Action	If appropriate, the District shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.

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District Investigation	<p>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 principal or supervisor shall be involved in or informed of the investigation.</p> <p>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.</p>
Concluding the Investigation	<p>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.</p> <p>The investigator shall prepare a written report of the investigation. The report shall be filed with the District official overseeing the investigation.</p>
District Action	<p>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.</p> <p>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.</p>
Confidentiality	<p>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.</p>
Appeal	<p>A complainant who is dissatisfied with the outcome of the investigation may appeal through DGBA(LOCAL), beginning at the appropriate level.</p> <p>The complainant may have a right to file a complaint with appropriate state or federal agencies.</p>
Response to Sexual Harassment—Title IX	<p>For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).</p>
General Response	<p>When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:</p>

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- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;
- Consider the complainant's wishes with respect to supportive measures; and
- Explain to the complainant the option and process for filing a formal complaint.

The District's response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.

If a formal complaint is not filed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and administrative procedures.

Title IX Formal
Complaint Process

To distinguish the process described below from the District's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the District's "Title IX formal complaint process."

The Superintendent shall ensure the development of a Title IX formal complaint process that complies with legal requirements. [See FFH(LEGAL)] The formal complaint process shall be posted on the District's website. In compliance with Title IX regulations, the District's Title IX formal complaint process shall address the following basic requirements:

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. A requirement that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias;
4. A presumption that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law;

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6. A description of the possible disciplinary sanctions and remedies that may be implemented following a determination of responsibility for the alleged sexual harassment;
7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment;
8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegations therein;
9. A description of the supportive measures available to the complainant and respondent;
10. A prohibition on using or seeking information protected under a legally recognized privilege unless the individual holding the privilege has waived the privilege;
11. Additional formal complaint procedures in 34 C.F.R. 106.45(b), including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures; and
12. Other local procedures as determined by the Superintendent.

Standard of
Evidence

The standard of evidence used to determine responsibility in a Title IX formal complaint of sexual harassment shall be the preponderance of the evidence.

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 of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or otherwise participates or refuses to participate in an investigation.

Examples

Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, intimidation, coercion, unjustified negative evaluations, unjustified negative references, or increased surveillance.

Records Retention

The District shall retain copies of allegations, investigation reports, and related records regarding any prohibited conduct in accordance with the District's records control schedules, but for no less than the minimum amount of time required by law. [See CPC]

[For Title IX recordkeeping and retention provisions, see FFH(LEGAL) and the District's Title IX formal complaint process.]

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**Access to Policy and
Procedures**

Information regarding this policy and any accompanying procedures shall be distributed annually to District employees. Copies of the policy and procedures shall be posted on the District's website, to the extent practicable, and readily available at each campus and the District's administrative offices.

Title IX Coordinator

The District designates and authorizes the following person as the Title IX coordinator to be responsible for coordinating the District's efforts to comply with Title IX of the Education Amendments of 1972, as amended, for employees:

Name: Lindsey Foley
Position: Executive Director of Human Resources
Address: 302 Laurel Drive, Friendswood, TX 77546
Email: [Title IX coordinator](mailto:lfoley@fisd12.net) (lfoley@fisd12.net)
Telephone: (281) 996-6624

ADA/Section 504 Coordinator

The District designates and authorizes the following person as the ADA/Section 504 coordinator to be responsible for coordinating the District's 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, for employees:

Name: Dahria Driskell
Position: Executive Director of Special Education
Address: 302 Laurel Drive, Friendswood, TX 77546
Email: [ADA/Section 504 coordinator](mailto:ddriskell@fisd12.net) (ddriskell@fisd12.net)
Telephone: (281) 482-1267

ASSIGNMENT AND SCHEDULES

DK
(LEGAL)

Note: The Board has adopted an [innovation plan](#)¹ that affects application of provisions in this legally referenced policy.

Credentials or Permit Required	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]
Principal's Approval	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>
Transfers	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>
Parent Notification	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]

¹ Innovation Plan: <https://www.myfisd.com/explore-fisd/district-of-innovation>

ASSIGNMENT AND SCHEDULES

DK
(LOCAL)

Note: This local policy has been revised in accordance with the District's [innovation plan](#).¹

**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.

In accordance with the District's local innovation plan exemption regarding SBEC certification [see DBA], the Superintendent shall have the authority to approve a request by the principal for a qualified individual with experience in a specified field, including a career and technical education (CTE) field or dual credit field, to teach a specified course, including a CTE course or dual credit course. In addition, the Superintendent shall have the authority to approve the principal's request to assign a certified teacher to teach outside his or her certified field(s). All other teaching assignments shall require certification in accordance with state law. [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]

ASSIGNMENT AND SCHEDULES

DK
(LOCAL)

Daily time schedules for all employees shall be determined by the Superintendent or designee and principals.

¹ Innovation Plan: <https://www.myfisd.com/explore-fisd/district-of-innovation>

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

Grade Level	SBEC Rule
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

ASSIGNMENT AND SCHEDULES

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(EXHIBIT)

- Full-time teacher of orthopedically impaired or other health impaired in a hospital class or home-based instruction
- Teacher of students with visual impairments
- 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 231.751.

Administrators and other instructional and professional support personnel

The following positions are addressed at 19 Administrative Code 231.753.

- Superintendent
- Principal
- Assistant principal
- School counselor
- Librarian
- Athletic director

Licensed professional support personnel

The following positions are addressed at 19 Administrative Code 231.755.

- Associate school psychologist
- Audiologist
- Licensed professional counselor
- Marriage and family therapist
- Nurse
- Occupational therapist

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- Physical therapist
- Physician
- School psychologist
- Social worker
- Speech language pathologist

**Planning and
Preparation**

Each classroom teacher is entitled to at least 450 minutes in each two-week period for instructional preparation including parent-teacher conferences, evaluating students' work, and planning. A planning and preparation period may not be less than 45 minutes within the instructional day. During that time, a teacher may not be required to participate in any other activity. *Education Code 21.404* [See DC(LEGAL) for definition of classroom teacher]

Planning and preparation time must occur during the time that students at the school where the teacher is located are receiving instruction. *Canutillo Educators Ass'n v. Canutillo Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 042-R10-203 (April 30, 2010)*

Duty-Free Lunch

Each classroom teacher or full-time librarian is entitled to at least a 30-minute lunch period free from all duties and responsibilities connected with the instruction and supervision of students. The implementation of this requirement may not result in a lengthened school day. *Education Code 21.405* [See DC(LEGAL) for definition of classroom teacher and DEA(LEGAL) for definition of librarian]

Teachers may not be required to spend their 30-minute duty-free lunch break on school property. *Tex. Att'y Gen. Op. JM-481 (1986)*

Exception

If necessary because of a personnel shortage, extreme economic conditions, or unavoidable or unforeseen circumstances, a district may require a classroom teacher or librarian to supervise students during lunch. A classroom teacher or librarian may not be required to supervise students under this exception more than one day in any school week. *Education Code 21.405*

In determining whether an exceptional circumstance exists, a district shall use the following guidelines:

1. A personnel shortage exists when, despite reasonable efforts to use nonteaching personnel or the assistance of community volunteers to supervise students during lunch, no other personnel are available.
2. Extreme economic conditions exist when the percentage of a local tax increase, including the cost of implementing duty-free lunch requirements, would place the district in jeopardy with respect to a potential roll-back election.
3. Unavoidable or unforeseen circumstances exist when, because of illness, epidemic, or natural or man-made disaster, the district is unable to find individuals to supervise students during lunch.

19 TAC 153.1001

WORK LOAD
REQUIRED PLANS AND REPORTS

DLB
(LEGAL)

**Restrictions on
Written Reports**

The Board shall limit redundant requests for information and the number and length of written reports that a classroom teacher is required to prepare.

A classroom teacher may not be required to prepare any written information other than:

1. Any report concerning the health, safety, or welfare of a student;
2. A report of a student's grade on an assignment or examination;
3. A report of a student's academic progress in a class or course;
4. A report of a student's grades at the end of each grade reporting period;
5. A report on instructional materials;
6. A unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level or in each subject or topic at the elementary level;
7. An attendance report;
8. Any report required for accreditation review;
9. Any information required by the District that relates to a complaint, grievance, or actual or potential litigation and that requires the classroom teacher's involvement; or
10. Any information specifically required by law, rule, or regulation.

The District may collect essential information, in addition to the information specified above, from a classroom teacher on agreement between the classroom teacher and the District.

Paperwork Review

The Board shall review paperwork requirements imposed on classroom teachers and transfer to existing noninstructional staff a reporting task that can reasonably be accomplished by that staff.
[See BAA]

Education Code 11.164

The Commissioner of Education may authorize special accreditation investigations in response to repeated complaints concerning imposition of excessive paperwork requirements on classroom teachers. *Education Code 39.075(b-1)*

WORK LOAD
REQUIRED PLANS AND REPORTS

DLB
(LOCAL)

**Restrictions on
Written Reports**

Annually upon the Board's request, the Superintendent shall report to the Board on efforts to minimize teacher paperwork and on the number and length of written reports that teachers are required to prepare.

PROFESSIONAL DEVELOPMENT
REQUIRED STAFF DEVELOPMENT

DMA
(LEGAL)

Staff Development	
Educator	The staff development provided by a district to an educator other than a principal must be conducted in accordance with standards developed by the district and designed to improve education in the district.
Principal	The staff development provided by a district to a principal shall be governed by Education Code 21.3541 and rules adopted under that section. [See DNB] <i>Education Code 21.451(a), (a-1)</i>
Professional Development Policy	<p>A board shall annually review the SBEC continuing education and training clearinghouse published under Education Code 21.4514 and adopt a professional development policy that must:</p> <ol style="list-style-type: none">1. Be guided by the recommendations for training in the clearinghouse;2. Note any differences in the policy adopted by the district or school from the recommendations in the clearinghouse; and3. Include a schedule of all training required for educators or other school personnel at the district or school. <p>To the extent of any conflict, a frequency requirement for the completion of training provided by statute prevails over a frequency requirement for that training included in the professional development policy.</p> <p><i>Education Code 21.4515(a), (b)</i></p> <hr/> <p>Note: SBEC must publish the continuing education and training clearinghouse not later than June 1, 2022.</p> <p>A district must adopt its professional development policy for district personnel not later than August 1, 2022.</p> <hr/>
Requirements	<p>In designing educator staff development, a district must use procedures that, to the greatest extent possible, ensure the training included in the staff development:</p> <ol style="list-style-type: none">1. Incorporates proactive instructional planning techniques using a framework that:<ol style="list-style-type: none">a. Provides flexibility in the ways:<ol style="list-style-type: none">(1) Information is presented;(2) Students respond or demonstrate knowledge and skills; and

PROFESSIONAL DEVELOPMENT
REQUIRED STAFF DEVELOPMENT

DMA
(LEGAL)

- (3) Students are engaged;
 - b. Reduces barriers in instruction;
 - c. Provides appropriate accommodations, supports, and challenges; and
 - d. Maintains high achievement expectations for all students, including students with disabilities and students of limited English proficiency; and
2. Integrates inclusive and evidence-based instructional practices for all students, including students with disabilities.

Staff development shall be predominantly campus-based, related to achieving campus performance objectives, and developed and approved by the campus-level committee.

A district may use district-wide staff development that has been developed and approved through the district-level decision process. [See BQA and BQB, as appropriate]

Education Code 21.451(a-1), (b), (c)

Optional Training

Staff development may include training in:

1. Technology and digital learning; and
2. Positive behavior intervention and support strategies, including classroom management, district discipline policies, and the Student Code of Conduct.

Technology and digital learning training must:

1. Discuss basic technology proficiency expectations and methods to increase an educator's digital literacy; and
2. Assist an educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices.

Staff development may include instruction as to what is permissible under law, including opinions of the United States Supreme Court, regarding prayer in public school.

Education Code 21.451(d)(1), (d-3), (g)

Required Training

Staff development must include training on:

1. Suicide prevention;
2. Strategies for establishing and maintaining positive relationships among students, including conflict resolution; and

PROFESSIONAL DEVELOPMENT
REQUIRED STAFF DEVELOPMENT

DMA
(LEGAL)

3. Preventing, identifying, responding to, and reporting incidents of bullying.

Required training above must be provided in accordance with the board's professional development policy and use a best practice-based program recommended by the Health and Human Services Commission under Education Code 38.351 [see FFEB]. Required training may include two or more topics listed together.

Education Code 21.451(d)(3), (d-1)

*Instruction of
Students with
Disabilities*

Definition

"Student with a disability" means a student who is:

1. Eligible to participate in a school district's special education program under Education Code 29.003;
2. Covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794); or
3. Covered by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

Education Code 21.001(4)

Requirements

Staff development must include training that is evidence-based, as defined by Section 8101, Every Student Succeeds Act (20 USC 7801), and that:

1. Relates to the instruction of students with disabilities, including students with disabilities who also have other intellectual or mental health conditions; and
2. Is designed for educators who work primarily outside the area of special education.

A district is required to provide the training to an educator who works primarily outside the area of special education only if the educator does not possess the knowledge and skills necessary to implement the individualized education program developed for a student receiving instruction from the educator. A district may determine the time and place at which the training is delivered.

In developing or maintaining the training, a district must consult with persons with expertise in research-based practices for students with disabilities, including colleges, universities, private and nonprofit organizations, regional education service centers, qualified district personnel, and any other persons identified as qualified by the district, regardless of whether the training is provided at the campus or district level.

Education Code 21.451(d)(2), (e)–(f)

PROFESSIONAL DEVELOPMENT
REQUIRED STAFF DEVELOPMENT

DMA
(LEGAL)

*Suicide
Prevention*

The required suicide prevention training may be satisfied through independent review of suicide prevention training material that complies with the guidelines developed by TEA and is offered online. *Education Code 21.451(d-2); 19 TAC 153.1013(d)*

Suicide prevention programs on TEA's list of recommended best practice-based programs [see FFEB] must include components that provide for training school counselors, teachers, nurses, administrators, and other staff, as well as law enforcement officers and social workers who regularly interact with students, to:

1. Recognize students at risk of attempting suicide, including students who are or may be the victims of or who engage in bullying;
2. Recognize students displaying early warning signs and a possible need for early mental health or substance abuse intervention, which warning signs may include declining academic performance, depression, anxiety, isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others;
3. Intervene effectively with students described above by providing notice and referral to a parent or guardian so appropriate action, such as seeking mental health or substance abuse services, may be taken by a parent or guardian; and
4. Assist students in returning to school following treatment of a mental health concern or suicide attempt.

A district shall provide training described in the components above for teachers, school counselors, principals, and all other appropriate personnel. A district is required to provide the training at an elementary school campus only to the extent that sufficient funding and programs are available. A school district may implement a program on TEA's list of recommended best practice-based programs [see FFEB] to satisfy this training requirement.

If a district provides the training, a district shall require completion in accordance with the district's professional development policy and maintain records that include district employees who participated in the training.

Education Code 38.351(e), (g), (h); 19 TAC 153.1013

Staff Development
Account

A district that receives resources from the commissioner of education's staff development account must pay to the commissioner for deposit in the account an amount equal to one-half of the cost of the resources provided to the district. *Education Code 21.453(c)*

PROFESSIONAL DEVELOPMENT
REQUIRED STAFF DEVELOPMENT

DMA
(LEGAL)

**Child Abuse,
Trafficking, and
Maltreatment**

A district's methods for increasing awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children [see District Improvement Plan at BQ and Sexual Abuse, Trafficking, and Maltreatment Policies and Programs at FFG] must include training concerning prevention techniques for and recognition of sexual abuse, sex trafficking, and all other maltreatment of children, including the sexual abuse, sex trafficking, and other maltreatment of children with significant cognitive disabilities.

The training must be provided in accordance with the district's professional development policy and as part of new employee orientation to all new employees.

The training must include:

1. Factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;
2. Warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;
3. Internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;
4. Techniques for reducing a child's risk of sexual abuse, trafficking, or other maltreatment; and
5. Information on community organizations that have relevant research-based programs and that are able to provide training or other education for district staff, students, and parents.

A district must maintain records that include staff members who participated in the training.

To the extent that resources are not yet available from TEA or the commissioner of education, districts shall implement the policies and trainings with existing or publicly available resources. The district may also work in conjunction with a community organization to provide the training at no cost to the district.

Education Code 38.0041(c)–(f); 19 TAC 61.1051(d)

**Trauma-Informed
Care**

A district's efforts to increase awareness and implementation of trauma-informed care must include training to new and existing employees in accordance with the district's professional development policy. [See BQ, FFBA] *Education Code 38.036(c)*

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REQUIRED STAFF DEVELOPMENT

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Student Discipline

Each principal or other appropriate administrator who oversees student discipline shall, at least once every three school years, attend professional development training regarding Education Code Chapter 37, Subchapter G. The professional development shall include training relating to the distinction between a discipline management technique used at the principal's discretion under Education Code 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Education Code 37.002(b) [see FOA].

The professional development training may be provided in coordination with an education service center through the use of distance learning methods, such as telecommunications networks, and using available TEA resources.

Education Code 37.0181

Test Administration Training

The commissioner may require training for district employees involved in the administration of assessment instruments. The commissioner may only require the employee at each district campus who oversees the administration of the assessment instruments to annually receive the training. The district employee who oversees test administration on a district campus may, with discretion, require other district employees involved in the administration of assessment instruments to repeat the training. *Education Code 39.0304(a), (b-1), (b-2)*

Cybersecurity Training

Employees identified by the district with access to a district computer system or database and who use a computer to perform at least 25 percent of the employee's required duties must complete a cybersecurity training program selected by the board. The district, in consultation with its cybersecurity coordinator, shall determine how frequently employees must complete the training. [See CQB] *Gov't Code 2054.5191(a-1); Education Code 11.175(g)*

Special Programs Training

Teacher Literacy
Achievement
Academies

A district shall ensure that:

1. Not later than the 2022–23 school year, each classroom teacher in kindergarten or first, second, or third grade and each principal at a campus with kindergarten or first, second, or third grade has attended a teacher literacy achievement academy developed under Education Code 21.4552; and
2. Each classroom teacher and each principal initially employed in a grade level or at a campus described above for the 2022–23 school year or a subsequent school year has attended a

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DMA
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teacher literacy achievement academy developed under Education Code 21.4552 by the end of the teacher's or principal's first year of placement in that grade level or campus.

Education Code 28.0062(a)(2)

[See EHAB for kindergarten–grade 3 reading standards]

Gifted and Talented
Education

A district shall ensure that:

1. Before assignment to the program for gifted students, teachers who provide instruction and services that are part of the program have a minimum of 30 hours of staff development that includes nature and needs of gifted/talented students, assessment of student needs, and curriculum and instruction for gifted students.
2. Teachers without the required training who provide instruction and services that are part of the gifted/talented program complete the 30-hour training requirement within one semester.
3. Teachers who provide instruction and services that are part of a program for gifted students receive a minimum of six hours annually of professional development in gifted education.
4. Administrators and counselors who have authority for program decisions have a minimum of six hours of professional development that includes nature and needs of gifted/talented students and program options.

19 TAC 89.2

Elective Bible
Course

A teacher of an elective Bible course offered under Education Code 28.011 [see EMI] must hold a certificate in language arts, social studies, or history that qualifies the teacher to teach at the grade level at which the course is offered with, where practical, a minor in religious or biblical studies. The teacher must successfully complete staff development training developed by the commissioner for elective Bible courses. An elective Bible course may be taught only by a teacher who has successfully completed the commissioner's training under Education Code 21.459. *Education Code 28.011(f)*

Texas English
Language
Proficiency
Assessment
System Training

The employee assigned to oversee the administration of the Texas English Language Proficiency Assessment System (TELPAS) at a district campus may, with discretion, require other district employees involved in administering the TELPAS to complete training or online calibration activities described by Education Code 21.4571(a). An employee may not be required to complete a training or online calibration activity in one sitting. *Education Code 21.4571(b), (c)*

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**Automated External
Defibrillators**

A district shall, in accordance with its professional development policy, make available to employees and volunteers instruction in the principles and techniques of cardiopulmonary resuscitation and the use of an automated external defibrillator (AED).

Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other employee specified by the commissioner, and each student who serves as an athletic trainer, must:

1. Participate in the instruction; and
2. Receive and maintain certification in the use of an AED from the American Heart Association, the American Red Cross, or a similar nationally recognized association.

Education Code 22.902

**Extracurricular
Activity Safety
Training**

The following persons must satisfactorily complete an extracurricular activity safety training program in accordance with the district's professional development policy:

1. A coach, trainer, or sponsor for an extracurricular athletic activity; and
2. A director responsible for a school marching band.

The safety training program must include:

1. Certification of participants by the American Red Cross, the American Heart Association, or a similar organization or by the University Interscholastic League;
2. Current training in:
 - a. Emergency action planning;
 - b. Communicating effectively with 9-1-1 emergency service operators and other emergency personnel; and
 - c. Recognizing symptoms of potentially catastrophic injuries, including head and neck injuries, concussions, injuries related to second impact syndrome, asthma attacks, heatstroke, cardiac arrest, and injuries requiring use of a defibrillator; and
3. A safety drill that incorporates the training and simulates various injuries described above.

Education Code 33.202(b), (c); 19 TAC 76.1003

Records

A superintendent shall maintain complete and accurate records of the district's compliance and the district shall make available to the

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public proof of compliance for each person employed by or volunteering for the district who is required to receive safety training.

A campus that is determined by a superintendent to be out of compliance with the safety training requirements shall be subject to the range of penalties determined by the UIL.

Education Code 33.206; 19 TAC 76.1003(e)

Steroids

A district shall require that each employee who serves as an athletic coach at or above the seventh grade level for an extracurricular athletic activity sponsored or sanctioned by the UIL complete:

1. The educational program developed by the UIL regarding the health effects of steroids; or
2. A comparable program developed by the district or a private entity with relevant expertise.

Education Code 33.091(c-1)

Concussions

At least once every two years, the following employees shall take a training course from an authorized provider in the subject matter of concussions:

1. A coach of an interscholastic athletic activity shall take a course approved by the UIL.
2. An athletic trainer who serves as a member of a district's concussion oversight team shall take a course approved by the Texas Department of Licensing and Regulation (TDLR) or a course approved for continuing education credit by the licensing authority for athletic trainers.
3. A school nurse or licensed health-care professional, other than an athletic trainer, who serves as a member of a district's concussion oversight team shall take a course approved by the UIL, TDLR, or the appropriate licensing authority for the profession.

The employee must submit proof of timely completion of an approved course to the superintendent or designee. A school nurse or licensed health-care professional who is not in compliance with these training requirements may not serve on a concussion oversight team in any capacity. [See FM]

Education Code 38.158

**Seizure Recognition
and Related First Aid**

A school nurse employed by a district must complete a TEA-approved online course of instruction for school nurses regarding managing students with seizure disorders that includes information about seizure recognition and related first aid.

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A district employee, other than a school nurse, whose duties at the school include regular contact with students must complete a TEA-approved online course of instruction for school personnel regarding awareness of students with seizure disorders that includes information about seizure recognition and related first aid.

Education Code 38.033(a), (b)

[See FFAF for information about a seizure management and treatment plan.]

PERFORMANCE APPRAISAL

DN
(LOCAL)

General Principles	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.
Criteria	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.
Performance Review	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]
Documentation and Records	Appraisal records and forms, reports, correspondence, and memoranda may be placed in each employee's personnel records to document performance.
Employee Copy	All employees shall receive a copy of their annual written evaluation.
Complaints	Employees may present complaints regarding the evaluation and appraisal process in accordance with the District's complaint policy for employees. [See DGBA]

Note: The Board has adopted an [innovation plan](#)¹ that affects application of provisions in this legally referenced policy.

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EVALUATION OF TEACHERS

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Teacher Appraisal

The employment policies adopted by the board must require a written evaluation of each teacher at annual or more frequent intervals.

A teacher appraisal must be done at least once for 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.

Education Code 21.203, .352(c)

**Interim Evaluations
and Guidance**

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. *Education Code 21.352(c-1)*

**Required
Components**

The statutorily required components of teacher appraisal are defined as follows:

1. The implementation of discipline management procedures is the teacher's pedagogical practices that produce student engagement and establish the learning environment.
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.

19 TAC 150.1001(f)

**Notice and Use of
Evaluations**

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. *Education Code 21.352(e)*

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. *Education Code 21.352(f)*

**Role of
Extracurricular
Activities**

A teacher who directs extracurricular activities in addition to performing classroom teaching duties shall be appraised only on the basis of classroom teaching performance and not on performance in connection with extracurricular activities. *Education Code 21.353*

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**Disciplinary
Referrals**

A district may not assign an area of deficiency to a teacher solely on the basis of disciplinary referrals made by the teacher or documentation regarding student conduct submitted by the teacher under Education Code 37.002. [See FOA for discretionary removal] A district is not prohibited from assigning an area of deficiency to a teacher based on documented evidence of a deficiency in classroom management obtained through observation or a substantiated report. *Education Code 21.352(a-1)*

**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 or administrator is confidential and is not subject to disclosure under the Public Information Act, Government Code 552. *Education Code 21.355(a)* [For disclosure requirements on evaluations, see GBA]

**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 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

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method or the district's locally adopted appraisal system, in a manner prescribed by the commissioner.

19 TAC 150.1008

Note: The following provisions apply to teacher appraisal using the state appraisal method.

**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.

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.

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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:

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)

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	<p>A teacher may be given advance notice of the date or time of an appraisal, but advance notice is not required. <i>Education Code 21.352(d); 19 TAC 150.1003(c)</i></p>
Assessment of Teacher Performance	<p>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. <i>19 TAC 150.1003(a)</i></p> <p>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). <i>19 TAC 150.1003(e)</i></p>
<i>Less-Than-Annual Appraisal</i>	<p>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.</p> <p>District policy may stipulate:</p> <ol style="list-style-type: none">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 accepted or whether that teacher is to be appraised by the new campus administrator; and4. 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) (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 (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
 - d. Activities.
2. Domain II. Instruction, which includes the following dimensions:
 - a. Achieving expectations;
 - b. Content knowledge and expertise;
 - c. Communication;

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- 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.

*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) (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.

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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
 - 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 (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:
 - 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) (student growth measures), when available; and

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- 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 potential 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)

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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

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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)

Note: The following provisions apply to teacher appraisal using a district-developed appraisal method.

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:

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:

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- 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)

Note: The following provisions apply to teacher appraisal using a campus-developed appraisal method.

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];
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

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- 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)

Note: The following provision applies to appraiser training under a local appraisal process (district- or campus-developed).

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*

Note: The standards to be used to inform the training, appraisal, and professional development of teachers are outlined in 19 Administrative Code 149.1001.

¹ Innovation Plan: <https://www.myfisd.com/explore-fisd/district-of-innovation>

Note: This local policy has been revised in accordance with the District's [innovation plan](#).¹

**Mustang Teacher
Evaluation and
Support System
(M-TESS)**

In accordance with the District's innovation plan, the District is exempt from state laws regarding teacher appraisal. The formal appraisal of District teachers shall be in accordance with a local appraisal system developed in compliance with statutory provisions and state rules.

The Mustang Teacher Evaluation and Support System (M-TESS) 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 include domains related to planning, instruction, learning environment, and professional practices and responsibilities.

The District shall establish an appraisal calendar each year.

Annual Appraisal

All teachers shall receive a 45-minute scheduled observation annually 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, Professional Goals document, and participate in a fall semester goal-setting conference and an end-of-year (EOY) conference.

Exception

Teachers who are eligible for less frequent evaluations in accordance with law [see DNA(LEGAL)] and the local criteria established in this policy shall be appraised in accordance with the provisions below.

**Less-Than-Annual
Eligibility**

A teacher shall be eligible to be appraised without an annual, formal 45-minute observation if he or she:

1. Has been employed by the District for more than two consecutive years;
2. Has not received a score of "improvement needed" on any dimension of the prior year's rubric;
3. Has not been placed on a growth plan;
4. Has not had any concerns expressed by his or her appraiser or other administrators; and
5. Has completed the Domain IV-only agreement.

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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:

1. Professional Demeanor and Ethics;
2. Goal Setting;
3. Professional Development; and
4. 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.

Frequency

Eligible teachers shall be appraised every three years.

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.

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 appraisal, the second appraiser shall be selected from a pre-established roster of trained appraisers.

The formal observation for a second appraisal shall be unscheduled.

Scores

The Board shall ensure that the Superintendent establishes procedures regarding how domain scores from first and second appraisals will be used.

**Annual Review
Process**

Local System

In the years in which an appraisal is not scheduled for an eligible teacher, he or she shall follow the procedures outlined in the District's local appraisal system.

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The annual review process shall produce a written document to be presented to the teacher, signed by the teacher and supervisor, and maintained in the personnel file.

¹ Innovation Plan: <https://www.myfisd.com/explore-fisd/district-of-innovation>

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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 (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 (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 (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*

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.

**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 (Appraisals, Data Sources, and

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Conferences). At least one goal shall be focused on 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 a teacher or administrator is confidential and is not subject to disclosure under the Public Information Act, Government Code 552. *Education Code 21.355 (a)* [For disclosure requirements on evaluations, see GBA]

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Principals	The District shall appraise principals using the Texas Principal Evaluation and Support System (T-PESS) in accordance with law and administrative regulations.
Other Campus Administrators	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.
Frequency	District principals and other campus administrators shall be appraised annually.

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Principal	A board, by local policy, shall adopt qualifications for principals. <i>Education Code 11.202(c)</i>
Qualifications	
Certification	State Board for Educator Certification (SBEC) rules establish the requirements for receiving a principal certificate and for first-time principals in Texas. <i>19 TAC Ch. 241</i>
Duties	<p>The principal shall be the instructional leader of the school and shall be provided with adequate training and personnel assistance to assume that role. <i>Education Code 11.202(a)</i></p> <p>A principal shall:</p> <ol style="list-style-type: none">1. Approve all teacher and staff appointments for the campus. [See DK]2. Set specific education objectives for the campus, through the planning process.3. Develop budgets for the campus.4. Assume administrative responsibility and instructional leadership, under the supervision of the superintendent, for discipline at the campus.5. Assign, evaluate, and promote all personnel assigned to the campus.6. Recommend to the superintendent the termination, suspension, or nonrenewal of an employee assigned to the campus.7. Perform any other duties assigned by the superintendent pursuant to board policy.8. Regularly consult with the campus-level committee in the planning, operation, supervision, and evaluation of the campus educational program. [See BQ series]9. Each school year, with the assistance of the campus-level committee, develop, review, and revise the campus improvement plan. [See BQ]10. For high school principals, serve, or appoint someone to serve, as deputy voter registrar for the county in which the school is located. <i>Election Code 13.046; 1 TAC 81.7</i> <p><i>Education Code 11.202(b), .253(c), (h)</i> [See also DMA]</p>

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Principal's Report to Superintendent	A principal must notify the superintendent not later than the seventh business day after the date:
<i>Educators</i>	<ol style="list-style-type: none">1. Of an educator's termination of employment or resignation following an alleged incident of misconduct under Education Code 21.006(b); or2. The principal knew about an educator's criminal record under Education Code 21.006(b)(1). <p><i>Education Code 21.006(b-2); 19 TAC 249.14(e)</i> [See Required Reports at DHB(LEGAL)]</p>
<i>Noncertified Employees</i>	A principal must notify the superintendent not later than the seventh business day after the date of a noncertified employee's termination or resignation following allegations that the employee: <ol style="list-style-type: none">1. Abused or otherwise committed an unlawful act with a student or minor; or2. Was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor. <p><i>Education Code 22.093(e)</i> [See Principal Notification at DHC(LEGAL)]</p>
<i>Sanctions and Administrative Penalty</i>	SBEC determines whether to impose sanctions, including an administrative penalty, against a principal who fails to provide notification to a superintendent. <i>Education Code 21.006(f), 22.093(i); 19 TAC 249.14(e), (h)</i> If a principal is required to notify a superintendent about an educator's criminal record or alleged incident of misconduct and fails to provide the notice 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>
<i>Criminal Offense</i>	A principal required to notify a superintendent about an employee's criminal record or alleged incident of misconduct commits a state jail felony if the principal fails to provide the notice by the required date with intent to conceal an educator's criminal record or alleged incident of misconduct. <i>Education Code 21.006(j), 22.093(k)</i>
School Nurse	
Minimum Salary Schedule	For purposes of the minimum salary schedule, a school nurse is 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,

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and practice and has been issued a license to practice professional nursing in Texas. *19 TAC 153.1022(a)(1)(D)*

Licensed Vocational
Nurse

The practice of vocational nursing must be performed under the supervision of an RN, physician, physician assistant, podiatrist, or dentist. *Occupations Code 301.353*

Supervision is the process of directing, guiding, and influencing the outcome of an individual's performance of an activity. *22 TAC 217.11(2)*

Nursing Peer
Review Committee

"Nursing peer review committee" includes a committee established under the authority of the governing body of a political subdivision for the purpose of conducting peer review.

A person shall establish a nursing peer review committee to conduct nursing peer review under Occupations Code Chapter 303 and Chapter 301:

1. For vocational nurses, if the person regularly employs, hires, or contracts for the services of eight or more nurses; and
2. For professional nurses, if the person regularly employs, hires, or contracts for the services of eight or more nurses, at least four of whom are RNs.

A person required to establish a nursing peer review committee under this section may contract with another entity to conduct peer review for the person.

Occupations Code 303.001(4), .0015

Note: Education Code 33.002 regarding certified school counselors applies only to school districts that apply for, receive, and allocate funds under Education Code 33.002(a).

**Certified School
Counselor**

A district with 500 or more students enrolled in elementary school grades shall employ a certified school counselor for each elementary school and at least one school counselor for each 500 elementary school students [see DBA].

A district with fewer than 500 students enrolled in elementary school grades shall provide guidance and counseling services to elementary school students by any of the following methods:

1. Employing a part-time certified school counselor.
2. Employing a part-time teacher who is also certified as a school counselor.

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3. Entering into a shared services agreement with one or more other districts to share a certified school counselor.

Education Code 33.002

Note: Education Code 33.006 applies to all districts that employ school counselors.

School Counselor
Duties

The primary responsibility of a school counselor is to counsel students to fully develop each student's academic, career, personal, and social abilities. In addition, a school counselor shall:

1. Participate in planning, implementing, and evaluating a comprehensive developmental guidance program to serve all students and to address the special needs of students who are:
 - a. At risk of dropping out of school, becoming substance abusers, participating in gang activity, or committing suicide;
 - b. In need of modified instructional strategies; or
 - c. Gifted and talented, with emphasis on identifying and serving gifted and talented students who are educationally disadvantaged;
2. Consult with students' parents or guardians and make referrals as appropriate in consultation with parents or guardians;
3. Consult with school staff, parents, and other community members to help them increase the effectiveness of students' education and promote student success;
4. Coordinate people and resources in the school, home, and community;
5. With the assistance of school staff, interpret standardized test results and other assessment data that help a student make educational and career plans;
6. Deliver classroom guidance activities or serve as a consultant to teachers conducting lessons based on the school's guidance curriculum; and
7. Serve as an impartial, non-reporting resource for interpersonal conflicts and discord involving two or more students, including accusations of bullying under Education Code 37.0832.

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Nothing in item 7, above, exempts a school counselor from any mandatory reporting requirements imposed by other provisions of law.

School Counselor
Policy

A board shall adopt a policy that requires a school counselor to spend at least 80 percent of the school counselor's total work time on duties that are components of the district's comprehensive school counseling program under Education Code 33.005. [See FFEA] Time spent in administering assessment instruments or providing other assistance in connection with assessment instruments, except time spent in interpreting data from assessment instruments, is not considered time spent on counseling.

Each school in the district shall implement the policy. A copy of the policy shall be maintained in the office of each school in the district and made available on request during regular school hours to district employees, parents of district students, and the public.

Exception

If a board determines that, because of staffing needs in the district or at a school in the district, a school counselor must spend less than 80 percent of the school counselor's total work time on duties that are components of the district's comprehensive school counseling program, the policy shall:

1. Include the reasons why the counselor needs to spend less than 80 percent of the counselor's work time on duties that are components of the counseling program;
2. List the duties the counselor is expected to perform that are not components of the counseling program; and
3. Set the percentage of work time that the counselor is required to spend on components of the counseling program.

*Counselor
Contracts*

A district may not include a provision in an employment contract with a school counselor under Education Code Chapter 21 that conflicts with the policy or, except as provided below, has the effect of authorizing a school principal or school district superintendent to require a school counselor to generally perform duties that are not primarily related to a counseling function.

A district that complies with the exception above may not include a provision in an employment contract under Education Code Chapter 21 with an affected school counselor that has the effect of requiring the counselor to generally perform a duty that is not primarily related to a counseling function unless the duty is specified in the district's policy as required above.

*Annual
Assessment*

A district shall annually assess its compliance with its school counselor policy and, on request by the commissioner, provide a written

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copy of the assessment to the Texas Education Agency (TEA) on or before the date specified by the commissioner.

Education Code 33.006

Nonphysician Mental Health Professional

A school district may employ or contract with one or more nonphysician mental health professionals.

In this section, "nonphysician mental health professional" means:

1. A psychologist licensed to practice in this state and designated as a health-service provider;
2. An RN with a master's or doctoral degree in psychiatric nursing;
3. A licensed clinical social worker;
4. A professional counselor licensed to practice in this state; or
5. A marriage and family therapist licensed to practice in this state.

Education Code 38.0101

Note: For information about mental health treatment, including counseling, see FFEA.

School Psychological Services

The Texas Behavioral Health Executive Council (TBHEC) has authority over the delivery of school psychological services in public schools. Recognizing the purview of the State Board of Education (SBOE) and TEA in safeguarding the rights of school children in Texas, the TBHEC adopts and enforces rules that reflect the occupational distinctions between the delivery of school psychological services in public schools and psychological services in the private sector. *22 TAC 465.38(a)*

Licensed Specialist
in School
Psychology (LSSP)

Licensed specialist in school psychology (LSSP) means a person who holds a license to engage in the practice of psychology under Occupations Code 501.260. *Occupations Code 501.002(2)*

School psychological services may be provided in Texas public schools only by an LSSP or other individual authorized by TBHEC in accordance with TBHEC rules. *22 TAC 465.38(e)*

Scope of Practice

An LSSP is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions that attempt to improve the learning, adjustment and behavior of students. These activities include, but are not limited to:

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1. Addressing special education eligibility;
2. Conducting manifestation determinations;
3. Assisting with the development and implementation of individual educational programs (IEPs);
4. Conducting behavioral assessments; and
5. Designing and implementing behavioral interventions and supports.

The assessment of emotional or behavioral disturbance, solely for educational purposes, using psychological techniques and procedures is considered the practice of school psychology.

An LSSP may not provide psychological services in any context or capacity outside of a public or private school.

22 TAC 465.38(b), (c)

Standards

The delivery of school psychological services in Texas public schools shall be consistent with nationally recognized standards for the practice of school psychology.

Occupations Code 501.260(c); 22 TAC 465.38(b)(3)

Notice of
Assignment or
Subcontract

An LSSP who contracts with a school to provide school psychological services must notify the school of any intent or plan to subcontract or assign those services to another provider prior to entering into the agreement. An LSSP shall be responsible for ensuring the school psychological services delivered comply with TBHEC standards. *22 TAC 465.38 (e)(3)*

Compliance with
Applicable
Education Laws

LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

1. Texas Education Code;
2. Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g;
3. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq.;
4. Texas Public Information Act, Texas Government Code, Chapter 552;
5. Section 504 of the Rehabilitation Act of 1973; and
6. Americans with Disabilities Act (ADA) 42 U.S.C. 12101.

22 TAC 465.38 (f)

PERSONNEL POSITIONS

DP
(LOCAL)

**Principal
Qualifications**

In addition to the minimal certification requirement, a principal shall have at least:

1. Working knowledge of curriculum and instruction;
2. The ability to evaluate instructional program and teaching effectiveness;
3. The ability to manage budgets and personnel and to coordinate campus functions;
4. The ability to explain policy, procedures, and data;
5. Strong communications, public relations, and interpersonal skills;
6. Prior experience in instructional leadership roles; and
7. Other qualifications deemed necessary by the Board and included in the job description.

School Counselors

In accordance with law, a school counselor shall spend 80 percent of the counselor's work time on duties that are components of a comprehensive school counseling program (CSCP). [See FFEA]

If the Board approves a determination by the administration that due to District or campus staffing needs or other reasons a school counselor is prevented from spending 80 percent of the counselor's work time on duties that are components of a CSCP, the Board shall direct the Superintendent to develop a revised job description for the school counselor that addresses the percentage of the school counselor's time that shall be spent on duties related to the components of a CSCP and the duties the school counselor is expected to perform in the remaining work time. The Superintendent shall report to the Board regarding adjustments to a school counselor's duties under this provision.

PERSONNEL POSITIONS
SUBSTITUTE, TEMPORARY, AND PART-TIME POSITIONS

DPB
(LEGAL)

**Uncertified
Substitutes**

State Board for Educator Certification requirements regarding assignment of certified employees apply to substitute teachers. If a district must employ a substitute teacher who is not certified, a list of the substitute teachers shall be retained in the district files. *19 TAC 231.1(e)*

Parent Notification

If a district assigns an inappropriately certified or uncertified teacher [as defined in DBA(LEGAL)] 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 students in that classroom.

A superintendent shall provide the notice not later than the 30th instructional day after the date of the assignment of the inappropriately certified or uncertified teacher. A district shall make a good-faith effort to ensure that the notice is provided in a bilingual form to any parent or guardian whose primary language is not English. A district shall retain a copy of the notice and make information relating to teacher certification available to the public on request. [See also DBA(LEGAL)]

Education Code 21.057

**Criminal History
Review**

A district shall obtain all criminal history record information that relates to a substitute teacher for a district or shared services arrangement through the Department of Public Safety's criminal history clearinghouse. [See DBAA] *Education Code 22.0836*

PERSONNEL POSITIONS
SUBSTITUTE, TEMPORARY, AND PART-TIME POSITIONS

DPB
(LOCAL)

Substitute Teachers	Available substitute teachers shall be found using the District's electronic substitute teacher program and in accordance with administrative regulations.
Application	Persons wishing to substitute teach in the District shall make application through the District's electronic application process. [See DC]
Documentation	Approved substitutes shall have on file in the District: <ol style="list-style-type: none">1. The District's application form;2. A record of highest education attained, a transcript for all college work, and/or Texas certificates; and3. An income tax withholding form.
Qualifications	The District shall attempt to hire certified teachers as substitutes whenever possible; however, no person shall be employed as a substitute who does not have at least 60 hours of college credit.
Pay	The rates for substitute pay shall be set by the Board and recorded in Board minutes.
Performance Responsibilities	A substitute shall be subject to all duties of a regular classroom teacher.