PEIMS

A district shall participate in the Public Education Information Management System (PEIMS) and through that system shall provide information required for the administration of the Foundation School Program and of other appropriate provisions of the Education Code. The PEIMS data standards, established by the commissioner of education, shall be used by a district to submit information. *Education Code 42.006; 19 TAC 61.1025*

Children's Internet Protection Act

Under the Children's Internet Protection Act (CIPA), a district must, as a prerequisite to receiving universal service discount rates, implement certain Internet safety measures and submit certification to the Federal Communications Commission (FCC). *47 U.S.C. 254*
[See UNIVERSAL SERVICE DISCOUNTS, below, for details]

Districts that do not receive universal service discounts but do receive certain federal funds under the Elementary and Secondary Education Act (ESEA) must, as a prerequisite to receiving these funds, implement certain Internet safety measures and submit certification to the Department of Education (DOE). *20 U.S.C. 7131*
[See ESEA FUNDING, below, for details]

Definitions

"Harmful to Minors"

"Harmful to minors" means any picture, image, graphic image file, or other visual depiction that:

1. Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

2. Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

3. Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

47 U.S.C. 254(h)(7)(G); 20 U.S.C. 7131(e)(6)

"Technology Protection Measure"

"Technology protection measure" means a specific technology that blocks or filters Internet access. *47 U.S.C. 254(h)(7)(I)*

Universal Service Discounts

An elementary or secondary school having computers with Internet access may not receive universal service discount rates unless a district submits to the FCC the certifications described below at CERTIFICATIONS TO THE FCC and a certification that an Internet safety policy has been adopted and implemented as described at INTERNET SAFETY POLICY below, and ensures the use of computers with Internet access in accordance with the certifications. *47 U.S.C. 254(h)(5)(A); 47 C.F.R. 54.520*

Certifications to the FCC

A district that receives discounts for Internet access and internal connections services under the federal universal support mechanism for schools must make certifications in accordance with 47 C.F.R. 54.520(c) each funding year. A district that only receives discounts for telecommunications services is not subject to the certification requirements, but must indicate that it only receives discounts for telecommunications services. *47 C.F.R. 54.520(b)*

With Respect to Minors

A district must submit certification that the district:

1. Is enforcing a policy of Internet safety for minors that includes monitoring their online activities and the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are obscene, child pornography, or harmful to minors;

2. Is enforcing the operation of such technology protection measure during any use of such computers by minors; and

3. Is educating minors, as part of its Internet safety policy, about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

47 U.S.C. 254(h)(5)(B)

With Respect to Adults

A district must submit certification that the district:

1. Is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are obscene or child pornography; and

2. Is enforcing the operation of such technology protection measure during any use of such computers.

47 U.S.C. 254(h)(5)(C)

Disabling for Adults

An administrator, supervisor, or other person authorized by a district may disable the technology protection measure during use by an adult to enable access for bona fide research or other lawful purpose. *47 U.S.C. 254(h)(5)(D)*

Internet Safety Policy

A district shall adopt and implement an Internet safety policy that addresses:

1. Access by minors to inappropriate matter on the Internet and the World Wide Web;

2. The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

3. Unauthorized access, including "hacking," and other unlawful activities by minors online;

4. Unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and

5. Measures designed to restrict minors' access to materials harmful to minors.

47 U.S.C. 254(l)

Public Hearing A district shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy. *47 U.S.C. 254(h)(5)(A)(iii), (l)(1)(B)*

"Inappropriate for Minors" A determination regarding what matter is inappropriate for minors shall be made by a board or designee. *47 U.S.C. 254(l)(2)*

ESEA Funding Federal funds made available under Title IV, Part A of the ESEA for an elementary or secondary school that does not receive universal service discount rates may not be used to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet unless a district:

1. Has in place a policy of Internet safety for minors that includes the operation of a technology protection measure that protects against access to visual depictions that are obscene, child pornography, or harmful to minors; and enforces the operation of the technology protection measure during any use by minors of its computers with Internet access; and

2. Has in place a policy of Internet safety that includes the operation of a technology protection measure that protects against access to visual depictions that are obscene or child pornography; and enforces the operation of the technology protection measure during any use of its computers with Internet access.

A district may disable the technology protection measure to enable access for bona fide research or other lawful purposes.

Certification to DOE A district shall certify its compliance with these requirements during each annual program application cycle under the ESEA.

20 U.S.C. 7131

Transfer of Equipment to Students

A district may transfer to a student enrolled in the district:

1. Any data processing equipment donated to the district, including equipment donated by a private donor, a state eleemosynary institution, or a state agency under Government Code 2175.905;
2. Any equipment purchased by the district; and
3. Any surplus or salvage equipment owned by the district.

Education Code 32.102(a)

Before transferring data processing equipment to a student, a district must:

1. Adopt rules governing transfers, including provisions for technical assistance to the student by the district;
2. Determine that the transfer serves a public purpose and benefits the district; and
3. Remove from the equipment any offensive, confidential, or proprietary information, as determined by the district.

Education Code 32.104

Donations

A district may accept:

1. Donations of data processing equipment for transfer to students; and
2. Gifts, grants, or donations of money or services to purchase, refurbish, or repair data processing equipment.

Education Code 32.102(b)

A district shall not pay a fee or other reimbursement to a state eleemosynary institution or institution or agency of higher education or other state agency for surplus or salvage data processing equipment it transfers to the district. *Government Code 2175.905(c)*

Use of Public Funds

A district may spend public funds to:

1. Purchase, refurbish, or repair any data processing equipment transferred to a student; and
2. Store, transport, or transfer data processing equipment under this policy.

Education Code 32.105

Eligibility	A student is eligible to receive data processing equipment under this policy only if the student does not otherwise have home access to data processing equipment, as determined by a district. A district shall give preference to educationally disadvantaged students. *Education Code 32.103*
Return of Equipment	Except as provided below, a student who receives data processing equipment from a district under this policy shall return the equipment to the district not later than the earliest of: 1. Five years after the date the student receives the equipment; 2. The date the student graduates; 3. The date the student transfers to another district; or 4. The date the student withdraws from school. If, at the time the student is required to return the equipment, the district determines that the equipment has no marketable value, the student is not required to return the equipment. *Education Code 32.106*
Uniform Electronic Transactions Act	A district may agree with other parties to conduct transactions by electronic means. Any such agreement or transaction must be done in accordance with the Uniform Electronic Transactions Act. *Business and Commerce Code Chapter 322; 1 TAC 203*
Digital Signature	A digital signature may be used to authenticate a written electronic communication sent to a district if it complies with rules adopted by the board. Before adopting the rules, the board shall consider the rules adopted by the Department of Information Resources (DIR) and, to the extent possible and practicable, make the board's rules consistent with DIR rules. *Gov't Code 2054.060; 1 TAC 203*
Security Breach Notification To Individuals	A district that owns or licenses computerized data that includes sensitive personal information shall disclose, in accordance with the notice provisions at Business and Commerce Code 521.053(e), any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made as quickly as possible, except as provided at CRIMINAL INVESTIGATION EXCEPTION below, or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.
To the Owner or License Holder	A district that maintains computerized data that includes sensitive personal information not owned by the district shall notify the owner or license holder of the information, in accordance with Business and Commerce Code 521.053(e), of any breach of system

security immediately after discovering the breach, if the sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

To a Consumer Reporting Agency

If a district is required to notify at one time more than 10,000 persons of a breach of system security, the district shall also notify each consumer reporting agency, as defined by 15 U.S.C. 1681a, that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices. The district shall provide the notice without unreasonable delay.

Criminal Investigation Exception

A district may delay providing the required notice to state residents or the owner or license holder at the request of a law enforcement agency that determines that the notification will impede a criminal investigation. The notification shall be made as soon as the law enforcement agency determines that the notification will not compromise the investigation.

Information Security Policy

A district that maintains its own notification procedures as part of an information security policy for the treatment of sensitive personal information that complies with the timing requirements for notice described above complies with Business and Commerce Code 521.053 if the district notifies affected persons in accordance with that policy.

Business and Commerce Code 521.053; Local Gov't Code 205.010

Definitions

"Breach of System Security"

"Breach of system security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the person for the purposes of the person is not a breach of system security unless the person uses or discloses the sensitive personal information in an unauthorized manner. *Business and Commerce Code 521.053(a)*

"Sensitive Personal Information"

"Sensitive personal information" means:

1. An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
    a. Social security number;
    b. Driver's license number or government-issued identification number; or

c. Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or

2. Information that identifies an individual and relates to:

a. The physical or mental health or condition of the individual;

b. The provision of health care to the individual; or

c. Payment for the provision of health care to the individual.

"Sensitive personal information" does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

Business and Commerce Code 521.002(a)(2), (b)

Access to Electronic Communications

Electronic Communication Privacy Act

Except as otherwise provided in the Electronic Communication Privacy Act, 18 U.S.C. 2510–22, a person commits an offense if the person:

1. Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;

2. Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

a. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

b. Such device transmits communications by radio, or interferes with the transmission of such communication; or

c. Such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

d. Such use or endeavor to use takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

e. Such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

3. Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication;

4. Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication; or

5. Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by 18 U.S.C. 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518; knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation; having obtained or received the information in connection with a criminal investigation; and with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.

It shall not be unlawful for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.

18 U.S.C. 2511(1), (2)(d)

Stored Wire and Electronic Communications and Transactional Records Access Act

A district must comply with the Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. 2701–12.

Whoever intentionally accesses without authorization a facility through which an electronic communication service is provided or intentionally exceeds an authorization to access that facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system commits an offense. *18 U.S.C. 2701(a)*

Exceptions

This section does not apply with respect to conduct authorized:

1. By the person or entity providing a wire or electronic communications service;

2. By a user of that service with respect to a communication of or intended for that user; or

3. By sections 18 U.S.C. 2703, 2704, or 2518.

18 U.S.C. 2701(c)

Definitions

"Electronic Communication" "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce. *18 U.S.C. 2510(12), 2711(1)*

"Electronic Storage" "Electronic storage" means:

1. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

2. Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

18 U.S.C. 2510(17), 2711(1)

The term encompasses only the information that has been stored by an electronic communication service provider. Information that an individual stores to the individual's hard drive or cell phone is not in electronic storage under the statute. *Garcia v. City of Laredo, 702 F.3d 788 (5th Cir. 2012)*

"Electronic Communications System" "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications. *18 U.S.C. 2510(14), 2711(1)*

"Electronic Communication Service" "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications. *18 U.S.C. 2510(15), 2711(1)*

"Facility" "Facility" includes servers operated by electronic communication service providers for the purpose of storing and maintaining electronic storage. The term does not include technology, such as cell phones and computers, that enables the use of an electronic communication service. *Garcia v. City of Laredo, 702 F.3d 788 (5th Cir. 2012)*

"Person" "Person" means any employee, or agent of the United States or any state or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation. *18 U.S.C. 2510(6), 2711(1)*

Cybersecurity Information Sharing Act

A district may, for a cybersecurity purpose and consistent with the protection of classified information, share with, or receive from, any other non-federal entity or the federal government a cyber threat indicator or defensive measure. A district receiving a cyber threat indicator or defensive measure from another entity shall comply with otherwise lawful restrictions placed on the sharing or use of such cyber threat indicator or defensive measure by the sharing entity. *6 U.S.C. 1503(c)*

Protection and Use of Information

Security

A district monitoring an information system, operating a defensive measure, or providing or receiving a cyber threat indicator or defensive measure under 6 U.S.C. 1503 shall implement and utilize a security control to protect against unauthorized access to or acquisition of such indicator or measure. *6 U.S.C. 1503(d)(1)*

Removal of Personal Information

A district sharing a cyber threat indicator pursuant to these provisions shall, prior to sharing:

1. Review such indicator to assess whether it contains any information not directly related to a cybersecurity threat that the district knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual and remove such information; or

2. Implement and utilize a technical capability configured to remove any information not directly related to a cybersecurity threat that the district knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual.

6 U.S.C. 1503(d)(2)

Use of Information

A cyber threat indicator or defensive measure shared or received may, for cybersecurity purposes:

1. Be used by a district to monitor or operate a defensive measure that is applied to an information system of the district, or an information system of another non-federal entity or a federal entity upon written consent of that other entity; and

2. Be otherwise used, retained, and further shared by a district subject to an otherwise lawful restriction placed by the sharing entity on such indicator or measure, or an otherwise applicable provision of law.

6 U.S.C. 1503(d)(3)

Exception	A cyber threat indicator or defensive measure shared with a state, tribal, or local government under Title 6, United States Code, may not be used by any such government to regulate, including an enforcement action, the lawful activity of any non-federal entity or any activity taken by a non-federal entity pursuant to mandatory standards, including an activity relating to monitoring, operating a defensive measure, or sharing of a cyber threat indicator. A cyber threat indicator or defensive measure shared as described in this provision may, consistent with a state, tribal, or local government regulatory authority specifically relating to the prevention or mitigation of cybersecurity threats to information systems, inform the development or implementation of a regulation relating to such information systems. *6 U.S.C. 1503(d)(4)(C)*
Law Enforcement Use	A district that receives a cyber threat indicator or defensive measure under Title 6, United States Code, may use such indicator or measure for the purposes described in 6 U.S.C. 1504(d)(5)(A). *6 U.S.C. 1503(d)(4)(B)* [See CKE]
Exemption from Public Disclosure	A cyber threat indicator or defensive measure shared by or with a state, tribal, or local government under 6 U.S.C. 1503 shall be deemed voluntarily shared information and exempt from disclosure under any state or local freedom of information law, open government law, open meetings law, open records law, sunshine law, or similar law requiring disclosure of information or records. *6 U.S.C. 1503(d)(4)(B)* A cyber threat indicator or defensive measure shared with the federal government under Title 6, United States Code, shall be: 1. Deemed voluntarily shared information and exempt from disclosure under federal public information law and any state or local provision of law requiring disclosure of information or records; and 2. Withheld, without discretion, from the public under federal public information law and any state or local provision of law requiring disclosure of information or records. *6 U.S.C. 1504(d)(3)* [See GBA]
No Duty	Nothing in these provisions creates a duty to share a cyber threat indicator or defensive measure or to warn or act based on receipt of a cyber threat indicator or defensive measure; or undermines or limits the availability of otherwise applicable common law or statutory defenses. *6 U.S.C. 1505(c)*
Definitions *"Non-Federal Entity"*	"Non-federal entity" means any private entity, non-federal government agency or department, or state, tribal, or local government

(including a political subdivision, department, or component thereof). *6 U.S.C. 1501(14)*

"Cybersecurity Purpose" "Cybersecurity purpose" means the purpose of protecting an information system or information that is stored on, processed by, or transiting an information system from a cybersecurity threat or security vulnerability. The term does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement. *6 U.S.C. 1501(4)*

"Cybersecurity Threat" "Cybersecurity threat" means an action, not protected by the First Amendment to the United States Constitution, on or through an information system that may result in an unauthorized effort to adversely impact the security, availability, confidentiality, or integrity of an information system or information that it stored on, processed by, or transiting an information system. *6 U.S.C. 1501(5)*

"Cyber Threat Indicator" "Cyber threat indicator" means information that is necessary to describe or identify:

1. Malicious reconnaissance, as defined in 6 U.S.C. 1501(12), including anomalous patterns of communications that appear to be transmitted for the purpose of gathering technical information related to a cybersecurity threat or security vulnerability;
2. A method of defeating a security control or exploitation of a security vulnerability;
3. A security vulnerability, including anomalous activity that appears to indicate the existence of a security vulnerability;
4. A method of causing a user with legitimate access to an information system or information that is stored on, processed by, or transiting an information system to unwittingly enable the defeat of a security control or exploitation of a security vulnerability;
5. Malicious cyber command and control, as defined in 6 U.S.C. 1501(11);
6. The actual or potential harm caused by an incident, including a description of the information exfiltrated as a result of a particular cybersecurity threat;
7. Any other attribute of a cybersecurity threat, if disclosure of such attribute is not otherwise prohibited by law; or
8. Any combination thereof.

6 U.S.C. 1501(6)

"Defensive Measure"	"Defensive measure" means an action, device, procedure, signature, technique, or other measure applied to an information system or information that is stored on, processed by, or transiting an information system that detects, prevents, or mitigates a known or suspected cybersecurity threat or security vulnerability. The term does not include a measure that destroys, renders unusable, provides unauthorized access to, or substantially harms an information system or information stored on, processed by, or transiting such information system not owned by the private entity operating the measure or another entity that is authorized to provide consent and has provided consent to that private entity for operation of such measure. *6 U.S.C. 1501(7)*
"Information System"	"Information system" has the meaning given the term in 44 U.S.C. 3502 and includes industrial control systems, such as supervisory control and data acquisition systems, distributed control systems, and programmable logic controllers. *6 U.S.C. 1501(9)*
"Security Control"	"Security control" means the management, operational, and technical controls used to protect against an unauthorized effort to adversely affect the confidentiality, integrity, and availability of an information system or its information. *6 U.S.C. 1501(16)*
"Security Vulnerability"	"Security vulnerability" means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control. *6 U.S.C. 1501(17)*

Note: For Board member use of District technology resources, see BBI. For student use of personal electronic devices, see FNCE.

For purposes of this policy, "technology resources" means electronic communication systems and electronic equipment.

Availability of Access

Access to the District's technology resources, including the Internet, shall be made available to students and employees primarily for instructional and administrative purposes and in accordance with administrative regulations.

Limited Personal Use

Limited personal use of the District's technology resources shall be permitted if the use:

1. Imposes no tangible cost on the District;
2. Does not unduly burden the District's technology resources; and
3. Has no adverse effect on an employee's job performance or on a student's academic performance.

Use by Members of the Public

Access to the District's technology resources, including the Internet, shall be made available to members of the public, in accordance with administrative regulations. Such use shall be permitted so long as the use:

1. Imposes no tangible cost on the District; and
2. Does not unduly burden the District's technology resources.

Acceptable Use

The Superintendent or designee shall develop and implement administrative regulations, guidelines, and user agreements consistent with the purposes and mission of the District and with law and policy.

Access to the District's technology resources is a privilege, not a right. All users shall be required to acknowledge receipt and understanding of all administrative regulations governing use of the District's technology resources and shall agree in writing to allow monitoring of their use and to comply with such regulations and guidelines. Noncompliance may result in suspension of access or termination of privileges and other disciplinary action consistent with District policies. [See DH, FN series, FO series, and the Student Code of Conduct] Violations of law may result in criminal prosecution as well as disciplinary action by the District.

Internet Safety

The Superintendent or designee shall develop and implement an Internet safety plan to:

1. Control students' access to inappropriate materials, as well as to materials that are harmful to minors;
2. Ensure student safety and security when using electronic communications;
3. Prevent unauthorized access, including hacking and other unlawful activities;
4. Restrict unauthorized disclosure, use, and dissemination of personally identifiable information regarding students; and
5. Educate students about cyberbullying awareness and response and about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms.

Filtering

Each District computer with Internet access and the District's network systems shall have filtering devices or software that blocks access to visual depictions that are obscene, pornographic, inappropriate for students, or harmful to minors, as defined by the federal Children's Internet Protection Act and as determined by the Superintendent or designee.

The Superintendent or designee shall enforce the use of such filtering devices. Upon approval from the Superintendent or designee, an administrator, supervisor, or other authorized person may disable the filtering device for bona fide research or other lawful purpose.

Monitored Use

Electronic mail transmissions and other use of the District's technology resources by students, employees, and members of the public shall not be considered private. Designated District staff shall be authorized to monitor the District's technology resources at any time to ensure appropriate use.

Disclaimer of Liability

The District shall not be liable for users' inappropriate use of the District's technology resources, violations of copyright restrictions or other laws, users' mistakes or negligence, and costs incurred by users. The District shall not be responsible for ensuring the availability of the District's technology resources or the accuracy, age appropriateness, or usability of any information found on the Internet.

Record Retention

A District employee shall retain electronic records, whether created or maintained using the District's technology resources or using personal technology resources, in accordance with the District's record management program. [See CPC]

Security Breach Notification

Upon discovering or receiving notification of a breach of system security, the District shall disclose the breach to affected persons or entities in accordance with the time frames established by law.

The District shall give notice by using one or more of the following methods:

1. Written notice.
2. Electronic mail, if the District has electronic mail addresses for the affected persons.
3. Conspicuous posting on the District's Web site.
4. Publication through broadcast media.

Copyrighted Material

Copyright protection subsists, in accordance with United States Copyright Law, 17 U.S.C. 101–1332, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

1. Literary works;
2. Musical works, including any accompanying words;
3. Dramatic works, including any accompanying music;
4. Pantomimes and choreographic works;
5. Pictorial, graphic, and sculptural works;
6. Motion pictures and other audiovisual works;
7. Sound recordings; and
8. Architectural works.

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S.C. 102

Ownership of Copyright

Copyright in a work protected under United States Copyright Law vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work. *17 U.S.C. 201(a)*

Work for Hire

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of United States Copyright Law, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright. *17 U.S.C. 201(b)*

A “work made for hire” is:

1. A work prepared by an employee within the scope of his or her employment; or
2. A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as

answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

A "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwards, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.

An "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

17 U.S.C. 101

Transfer of Ownership

The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by 17 U.S.C. 106, may be transferred and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner.

17 U.S.C. 201(d)

Registering a Copyright

At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by registering in accordance with 17 U.S.C. 408–409 and 708. Such registration is not a condition of copyright protection. *17 U.S.C. 408(a)*

Exclusive Rights

Subject to 17 U.S.C. 107–122, the owner of a copyright has the exclusive rights:

To reproduce the copyrighted work in copies or phonorecords;

1. To prepare derivative works based upon the copyrighted work;
2. To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

3. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

4. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

5. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C. 106

Fair Use

An exception to the exclusive rights enjoyed by copyright owners is the doctrine of fair use. The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by 17 U.S.C. 106, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. The following factors shall be considered in determining fair use:

1. The purpose and character of the use, including whether the use is of a commercial nature or for nonprofit educational purposes.

2. The nature of the copyrighted work.

3. The amount and importance of the portion used in relation to the copyrighted work as a whole.

4. The effect of the use upon the potential market for or value of the copyrighted work.

17 U.S.C. 107

Performances and Displays

Additional exceptions related to performances and displays include performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under United States Copyright Law, and that the person responsible for the performance knew or had reason to believe was not lawfully made.
17 U.S.C. 110

Guidelines

Employees who wish to use copyrighted print material and sheet music shall follow the guidelines set forth in the “Agreement on

Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" and "Guidelines for Educational Uses of Music." Those guidelines establish a minimum guaranteed fair use, not a maximum. Any use that falls within those guidelines is a fair use; any use that exceeds these guidelines shall be judged by the four factors stated above and may be subject to challenge. Any determination regarding whether a use that exceeds the guidelines is a fair use shall rest with an appropriate court of law.

Prohibitions

Notwithstanding the fair use guidelines, the following shall be prohibited:

1. Copying of print materials and sheet music to create or replace or substitute for anthologies, compilations, or collective works. This prohibition against replacement or substitution applies whether copies of various works or excerpts are accumulated, or reproduced and used separately.
2. Copying of or from works intended to be "consumable" in the course of study or teaching. These works include workbooks, exercises, standardized tests, test booklets, answer sheets, and like consumable material.

Copying shall not substitute for the purchase of books, publishers' reprints, or periodicals; be directed by higher authority; or be repeated with respect to the same item by the same teacher from term to term.

No charge shall be made to the student beyond the actual cost of the photocopying.

Additional prohibitions regarding the use of music are:

1. Copying for the purpose of performance, except as permitted under the "Guidelines for Educational Use of Music."
2. Copying for the purpose of substituting for the purchase of music, except as permitted under the "Guidelines for Educational Use of Music."
3. Copying without inclusion of the copyright notice that appears on the printed copy.

Reference

"Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" and "Guidelines for Educational Use of Music" contained in the historical note following 17 U.S.C. 107.

Broadcast Programs

Broadcast programs, including commercial and public television and radio, shall not be videotaped or tape recorded for reuse without permission, except within the following guidelines:

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by the District for a period not to exceed the first 45 consecutive calendar days after date of recording. At the end of that retention period, off-air recordings shall be erased or destroyed.

2. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities and repeated once only when instructional reinforcement is necessary during the first ten consecutive school days within the 45-calendar-day retention period. "School days" are actual days of instruction, excluding examination periods.

3. Off-air recordings shall be made at the request of and used by individual teachers and shall not be regularly recorded in anticipation of requests. No broadcast program shall be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program is broadcast.

4. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording. All copies of off-air recordings shall include the copyright notice on the broadcast program as recorded.

5. After the first ten consecutive school days, off-air recordings may be used up to the end of the 45-calendar-day retention period only to determine whether or not to include the broadcast program in the teaching curriculum and shall not be used in the District for student exhibition or any other nonevaluative purpose without authorization.

6. Off-air recordings need not be used in their entirety, but the recorded programs shall not be altered from their original content. Off-air recordings shall not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

17 U.S.C. 107 historical note

Copyright Infringement

Anyone who violates any of the exclusive rights of the copyright owner or of the author as provided in 17 U.S.C. 106A(a) is an infringer of the copyright or right of the author. The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to

the requirements of 17 U.S.C. 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. *17 U.S.C. 501(a)–(b)*

Online Copyright Infringement

Limitation of Liability

To the extent that the District is a "service provider" (regarding online services) under 17 U.S.C. 512(k) and meets other conditions in 17 U.S.C. 512, the District shall not be liable for monetary relief or certain injunctive or other equitable relief, except as allowed under 17 U.S.C. 512(j), for copyright infringement in certain online services (transitory communications, system caching, storage of information on systems or networks at the instruction of users, and information location tools) provided by the District. *17 U.S.C. 512*

Eligibility for Limitations on Liability

The limitations on liability established by 17 U.S.C. 512 shall apply to a service provider only if the service provider:

1. Has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and
2. Accommodates and does not interfere with standard technical measures. The term "standard technical measures" means technical measures that are used by copyright owners to identify or protect copyrighted works and:
    a. Have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;
    b. Are available to any person on reasonable and nondiscriminatory terms; and
    c. Do not impose substantial costs on service providers or substantial burdens on their systems or networks.

17 U.S.C. 512(i)

Limited Liability

Information Residing on Systems or Networks at Direction of Users

Generally, a service provider shall not be liable for monetary relief, or for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resided on a system or network controlled or operated by or for the service provider, if the service provider:

1. Does not have actual knowledge that the material or activity using the material on the system or network is infringing; in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

2. Does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity;

3. Upon notification of claimed infringement as described in 17 U.S.C. 512(c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity; and

4. Has designated an agent to receive notifications of claimed infringement described in 17 U.S.C. 512(c)(3), by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, certain contact information.

17 U.S.C. 512(c)(1), (2); 37 CFR 201.38

Other Online Services

Generally, liability of a service provider for copyright infringement may also be limited upon certain conditions for transitory communications, system caching, and information location tools services. *17 U.S.C. 512(a), (b), (d)*

Disabling or Removing Access

Generally, a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing. *17 U.S.C. 512(g)*

Note: Further information regarding copyrights and the Digital Millennium Copyright Act[1] can be found on the U.S. Copyright Office website.

Trademarked Material

Trademark

The term "trademark" includes any word, name, symbol, or device, or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and applies to register on the principal register to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

Service Mark

The term "service mark" means any word, name, symbol, or device, or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and applies to

register on the principal register to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

Certification Mark — The term "certification mark" means any word, name, symbol, or device, or any combination thereof, used by a person other than its owner or which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

Collective Mark — The term "collective mark" means a trademark or service mark used by the members of a cooperative, an association, or other collective group or organization or which such cooperative, association, or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register and includes marks indicating membership in a union, an association, or other organization.

15 U.S.C. 1127

Registering a Mark — Trademarks, service marks, collective marks, and certification marks may be registered in accordance with the Trademark Act of 1946, 15 U.S.C. 1051–1142. *15 U.S.C. 1051–1054*

Assignment of a Mark — A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark in accordance with 15 U.S.C. 1060. *15 U.S.C. 1060(a)(1)*

Liability — Any person shall be liable in a civil action by the registrant for the remedies provided in 15 U.S.C. 1114 if the person, without the consent of the registrant:

1. Uses in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or
2. Reproduces, counterfeits, copies or colorably imitates a registered mark and applies such reproduction, counterfeit, copy or

colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

Under item 2 above, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

15 U.S.C. 1114(1)

Note: Further information regarding trademarks[2] can be found on the U.S. Patent and Trademark Office (USPTO) website.

Patents

Invention — The term "invention" means invention or discovery. *35 U.S.C. 100(a)*

Process — The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material. *35 U.S.C. 100(b)*

Obtaining a Patent — Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement, may obtain a patent, subject to the conditions and requirements of 35 U.S.C. 1-376. *35 U.S.C. 101*

Assignment of Patent — Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States. *35 U.S.C. 261*

Infringement of Patents — Except as otherwise provided in 35 U.S.C. 1-376, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent, infringes the patent.

Whoever actively induces infringement of a patent shall be liable as an infringer.

Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

35 U.S.C. 271(a)–(c)

Note: Further information regarding patents[3] can be found on the USPTO website.

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[1] U.S. Copyright Office: http://www.copyright.gov
[2] USPTO on Trademarks: https://www.uspto.gov/trademark
[3] USPTO on Patents: https://www.uspto.gov/patent

Intellectual Property — All copyrights, trademarks, and other intellectual property rights shall remain with the District at all times.

Students — A student shall retain all rights to work created as part of instruction or using District technology resources.

Employees

District Ownership — As an agent of the District, an employee, including a student employee, shall not have rights to work he or she creates on District time or using District technology resources. The District shall own any work or work product created by a District employee in the course and scope of his or her employment, including the right to obtain copyrights.

Employee Ownership — If the employee obtains a patent for such work, the employee shall grant a non-exclusive, non-transferable, perpetual, royalty-free, Districtwide license to the District for use of the patented work. A District employee shall own any work or work product produced on his or her own time, away from his or her job and with personal equipment and materials, including the right to obtain patents or copyrights.

Permission — A District employee may apply to the Superintendent or designee to use District materials and equipment in his or her creative projects, provided the employee agrees either to grant to the District a non-exclusive, non-transferable, perpetual, royalty-free, Districtwide license to use the work, or permits the District to be listed as co-author or co-inventor if the District contribution to the work is substantial. District materials do not include student work, all rights to which are retained by the student.

Works Made for Hire — The District may hire an independent contractor for specially commissioned work(s) under a written works-made-for-hire agreement that provides that the District shall own the work product created under the agreement, as permitted by copyright law. Independent contractors shall comply with copyright law in all works commissioned.

Return of Intellectual Property — Upon the termination of any person's association with the District, all permission to possess, receive, or modify the District's intellectual property shall also immediately terminate. All such persons shall return to the District all intellectual property, including but not limited to any copies, no matter how kept or stored, and whether directly or indirectly possessed by such person.

Copyright — Unless the proposed use of a copyrighted work is an exception under the "fair use" guidelines maintained by the Superintendent or designee, the District shall require an employee or student to obtain a license or permission from the copyright holder before copying, modifying, displaying, performing, distributing, or otherwise

employing the copyright holder's work for instructional, curricular, or extracurricular purposes. This policy does not apply to any work sufficiently documented to be in the public domain.

Technology Use — All persons are prohibited from using District technology in violation of any law including copyright law. Only appropriately licensed programs or software may be used with District technology resources. No person shall use the District's technology resources to post, publicize, or duplicate information in violation of copyright law. The Board shall direct the Superintendent or designee to employ all reasonable measures to prevent the use of District technology resources in violation of the law. All persons using District technology resources in violation of law shall lose user privileges in addition to other sanctions. [See BBI and CQ]

Electronic Media — Unless a license or permission is obtained, electronic media in the classroom, including motion pictures and other audiovisual works, must be used in the course of face-to-face teaching activities as defined by law.

Designated Agent — The District shall designate an agent to receive notification of alleged online copyright infringement and shall notify the U.S. Copyright Office of the designated agent's identity. The District shall include on its Web site information on how to contact the District's designated agent and a copy of the District's copyright policy. Upon notification, the District's designated agent shall take all actions necessary to remedy any violation. The District shall provide the designated agent appropriate training and resources necessary to protect the District.

If a content owner reasonably believes that the District's technology resources have been used to infringe upon a copyright, the owner may notify the designated agent.

Trademark — The District protects all District and campus trademarks, including names, logos, mascots, and symbols, from unauthorized use.

School-Related Use — The District grants permission to students, student organizations, parent organizations and other District affiliated school-support or booster organizations to use, without charge, District and campus trademarks to promote a group of students, an activity or event, a campus, or the District, if the use is in furtherance of school-related business or activity. The Superintendent or designee shall determine what constitutes use in furtherance of school-related business or activity and is authorized to revoke permission if the use is improper or does not conform to administrative regulations.

Public Use — Members of the general public, outside organizations, vendors, commercial manufacturers, wholesalers, and retailers shall not use

District trademarks without the written permission of the Superintendent or designee. Any production of merchandise with District trademarks for sale or distribution must be pursuant to a trademark licensing agreement and may be subject to the payment of royalties.

Any individual, organization, or business that uses District trademarks without appropriate authorization shall be subject to legal action.

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)

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

Notice

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.

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

employee at the school at which the employee formerly taught or was assigned.

Length of Absence

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.

Education Code 21.409; Atty. Gen. Op. DM-177 (1992); Atty. Gen. Op. H-352 (1974)

Sick Leave Different from Temporary Disability Leave

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. *Atty. Gen. Op. H-352 (1974)*

Assault Leave

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.

A district employee is physically assaulted if the person engaging in the conduct causing injury to the employee:

1. Could be prosecuted for assault; or
2. Could not be prosecuted for assault only because the person's age or mental capacity makes the person a nonresponsible person for purposes of criminal liability.

Notice of Rights

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.

Assignment to Assault Leave

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.

Coordination with Workers' Compensation Benefits	Notwithstanding any other law, assault leave benefits due to an employee shall be coordinated with temporary income benefits due from workers' compensation so the employee's total compensation from temporary income benefits and assault leave benefits will equal 100 percent of the employee's weekly rate of pay. *Education Code 22.003(b)–(c-1)*
Religious Observances	A district shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of district business. Such absence shall be without pay unless applicable paid leave is available. *42 U.S.C. 2000e(j), 2000e-2(a); Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, (1986); Pinsker v. Joint Dist. No. 28J of Adams and Arapahoe Counties, 735 F.2d 388 (10th Cir. 1984)*
Compliance with a Subpoena	A district may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. *Labor Code 52.051(a)*
Jury Duty	A district may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against an employee because of the employee's compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, a district shall pay the employee the employee's normal daily compensation. An employee's accumulated personal leave may not be reduced because of the employee's service in compliance with a summons to appear as a juror. *Education Code 22.006*
Attendance at Truancy Hearing	A district may not terminate the employment of a permanent employee because the employee is required under Family Code 65.062(b) to attend a truancy court hearing. *Family Code 65.063*
Developmental Leaves of Absence	A board may grant a developmental leave of absence for study, research, travel, or other suitable purpose to an employee working in a position requiring a permanent teaching certificate who has served in a district at least five consecutive school years. A developmental leave of absence may be granted for one school year at one-half salary or for one-half of a school year at full salary paid to the employee in the same manner, on the same schedule, and with the same deductions as if the employee were on full-time duty. An employee on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be an employee of a district for purposes of participating in programs,

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

Education Code 21.452

Leave for Sick Foster Child

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

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

Labor Code 21.0595

Absence Control

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

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

Definitions

The term “immediate family” shall include:

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, sibling-in-law.
5. Grandparent and grandchild.
6. Any person who may be residing in the employee’s household at the time of illness or death.

For purposes of the Family and Medical Leave Act (FMLA), the definition of “family” includes only spouse, parent, and child.

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.

Workday

A “workday” for purposes of accumulation, use, or recording shall mean the number of hours per day equivalent to the employee’s usual assignment, whether full-time or part-time.

Moonlighting / Other Work While on Leave

Taking another job or working at another job while on family and medical leave or any other paid or unpaid leave pursuant to District policy is prohibited and shall be grounds for disciplinary action, up to and including termination in accordance with applicable policies.

State Personal Leave — Rate of Accrual

Each employee shall earn state personal leave at the rate of one-half workday for each 18 workdays of employment, up to the statutory maximum of five workdays annually.

Types of State Personal Leave

The Board requires employees to differentiate between uses of personal leave:

Discretionary

1. To be taken at the individual employee’s discretion, subject to limitations set out below.

Non- Discretionary

2. To be used for the same reasons and in the same manner as state sick leave accumulated prior to May 30, 1995. [See DEC(LEGAL)]

Use of Discretionary Leave

Request for Leave

A written request for use of discretionary personal leave shall be submitted to the immediate supervisor or designee in advance in accordance with administrative regulations. The reasons for which personal leave may be used shall not be limited by the District. In

deciding to approve personal leave, however, the supervisor or designee shall consider the effect of the employee's absence on the educational program, as well as the availability of substitutes. [See DEC(LEGAL)]

Duration of Leave — Discretionary personal leave may not be taken for more than five consecutive days.

Schedule Limitations — Discretionary leave shall not be allowed on the day before a school holiday, the day after a school holiday, days scheduled for end-of-semester or end-of-year exams, days scheduled for state-mandated assessment tests, or professional or staff development days.

Additional Local Leave

All employees shall earn an additional five workdays of local sick leave per school year, to be granted at the beginning of the school year.

Local sick leave shall be noncumulative and shall be taken with no loss of pay.

Use and Recording

Available leave shall be used in the following order, as applicable:

1. Local sick leave.
2. State sick leave accumulated prior to the 1995–96 school year.
3. State personal leave.

Local sick leave shall be used under the terms and conditions applicable to state sick leave accumulated prior to the 1995–96 school year, except as otherwise provided by this policy.

Employees shall be charged leave as used even if a substitute is not employed.

Leave shall be recorded in whole workdays and half workdays only, except when coordinated with workers' compensation benefits as provided in this policy.

Availability

Paid leave for the current year shall be available for use at the beginning of the school year. Paid leave shall not be approved for more workdays than have been accumulated in prior years plus those to be earned during the current year.

When an employee who has used more leave than he or she has accumulated ceases to be employed by the District, the cost of the unearned leave days shall be deducted from the employee's final paycheck.

Other Absences Any other leaves granted or days of absence shall result in a deduction of the daily rate of pay for each day of absence, unless otherwise provided. [See DMD(LOCAL)]

Medical Certification An employee absent more than five consecutive workdays because of personal illness shall submit, upon return to work, a medical certification of illness and of his or her fitness to return to work. An employee absent more than five consecutive workdays because of illness in the immediate family shall present, upon return to work, medical certification of the family member's illness. Medical certification shall be made by a health-care provider as defined by the FMLA. [See DEC(LEGAL)]

Temporary Disability Leave Any full-time employee whose position requires educator certification by the State Board for Educator Certification or by the District shall be eligible for temporary disability leave. The maximum length of temporary disability leave shall be 180 calendar days.

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

Family and Medical Leave For purposes of an employee's entitlement to family and medical leave, the 12-month period shall be measured forward from the day an individual employee's first family and medical leave begins.

Concurrent Use of Leave — The District shall require employees to use family and medical leave concurrently with paid leave and with temporary disability leave, if applicable.

Combined Leave for Spouses — If both spouses are employed by the District, family and medical leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition may be limited to a combined total of 12 weeks as determined by the needs of the District.

Intermittent Leave for Child Care — Use of intermittent family and medical leave shall not be permitted for the care of a newborn child or upon the adoption or placement of a child with the employee.

Certification of Illness — Upon request for family and medical leave for the employee's serious health condition or that of a spouse, parent, or child, the employee shall provide medical certification of the illness or disability.

Medical Release — The employee's request for reinstatement shall be accompanied by medical certification of the employee's ability to perform essential job functions.

Teacher Reinstatement	A teacher desiring to return to work at or near the conclusion of a semester shall be reinstated in accordance with the END-OF-TERM LEAVE section in DEC(LEGAL).
Failure to Return	If, at the expiration of the family and medical leave, the employee is able to return to work but chooses not to do so, the District shall require reimbursement of the employee benefits contribution made by the District during the period in which such leave was taken as unpaid leave.
Workers' Compensation	An employee receiving workers' compensation wage benefits shall be assigned to family and medical leave, if applicable.
Paid Leave Offset	The employee shall inform the appropriate administrator whether he or she chooses to use available paid leave. Any paid leave used shall be offset against workers' compensation wage benefits. [See CRE]
Sick Leave Pool	A sick leave pool may be established from voluntary donations by District staff to assist a fellow employee experiencing personal illness or disability or because of an illness or disability in the employee's immediate family. An employee requesting establishment of a sick leave pool shall provide certification of the need for the absence under the requirements for medical certification under the FMLA. "Immediate family" shall be defined as an employee's spouse or employee's child under the age of 21 who is living in the employee's home. "Illness or disability" shall include complications of pregnancy or childbirth verified by a physician.
Establishment	A request for the establishment of a sick leave pool shall be made in writing to the Superintendent or designee, accompanied by the required medical certification. The Superintendent or designee shall initiate the sick leave pool and notify District staff. To receive days from the pool, the requesting employee must exhaust all of his or her accumulated and available state and local leave days.
Restrictions	The sick leave pool shall be created by volunteer contributions of local leave by District staff, and the donated days shall be designated to a specific pool. An employee may contribute no more than three days to sick leave pools per school year. An employee may request establishment of a sick leave pool once per school year, with a maximum of 20 sick leave pool days used by an employee per year. The sick leave pool may not be used to extend leave due to pregnancy or childbirth, unless the employee has documented complications of pregnancy or childbirth.

Cessation of Pool

The sick leave pool shall cease to exist when the employee returns to work, when 20 total days have been used, or when the voluntary donations have been exhausted. Unused sick leave pool days shall revert to the donors and shall be divided proportionately among individuals who made donations to that pool according to the amount contributed. Reinstated days will be divided into increments of no less than half days.

If unused sick leave pool days cannot be evenly reinstated to donating employees under the previous paragraph, any time remaining shall be available for another sick leave pool until the end of the school year. Any days remaining at the end of a school year shall be forfeited in accordance with the provision that local leave days shall not accumulate from year to year.

Confidentiality

All contributions to a sick leave pool shall be voluntary and confidential. Disclosure by an employee of his or her donated days or any attempt to pressure or coerce another employee to make a donation or refrain from making a donation to a sick leave pool shall result in disciplinary action.

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.

Table of Contents

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

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

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*

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

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.

Amount of Leave

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

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

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

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

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.

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

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)

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 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 un-

usual circumstances justify the failure to comply, FMLA leave may be delayed or denied. *29 C.F.R. 825.302(d), .303(c)*

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.

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 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 regula-

tions. 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.

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 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*

Employee Free Speech

District employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.

Garcetti v. Ceballos, 547 U.S. 410 (2006); Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969) [See also GKD]

Whistleblower Protection

A board or its agents shall not suspend or terminate the employment of, or take other adverse personnel action against, an employee who in good faith reports a violation of law by a district or another public employee to an appropriate law enforcement authority.

A "report" is made to an "appropriate law enforcement authority" if the authority is a part of a state or local governmental entity or the federal government that the employee in good faith believes is authorized to:

1. Regulate under or enforce the law alleged to be violated in the report; or
2. Investigate or prosecute a violation of criminal law.

Gov't Code 554.002

A supervisor who suspends or terminates the employment of or takes an adverse personnel action against an employee for reporting a violation of law shall be subject to civil penalties. *Gov't Code 554.008*

Definitions

"Employee" means an employee or appointed officer who is paid to perform services for a district. It does not include independent contractors. *Gov't Code 554.001(4)*

"Law" means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance. *Gov't Code 554.001(1)*

A "good faith" belief that a violation of the law occurred means that:

1. The employee believed that the conduct reported was a violation of law; and
2. The employee's belief was reasonable in light of the employee's training and experience.

Wichita County v. Hart, 917 S.W.2d 779 (Tex. 1996)

A "good faith" belief that a law enforcement authority is an appropriate one means:

1. The employee believed the governmental entity was authorized to:
    a. Regulate under or enforce the law alleged to be violated in the report, or
    b. Investigate or prosecute a violation of criminal law; and
2. The employee's belief was reasonable in light of the employee's training and experience.

Tex. Dep't of Transp. v. Needham, 82 S.W.3d 314 (Tex. 2002)

Whistleblower Complaints

An employee who alleges a violation of whistleblower protection may sue a district for injunctive relief, actual damages, court costs, and attorney's fees, as well as other relief specified in Government Code 554.003. *Gov't Code 554.003*

Initiate Grievance

Before suing, an employee must initiate action under a district's grievance policy or other applicable policies concerning suspension or termination of employment or adverse personnel action.

The employee must invoke a district's grievance procedure not later than the 90th day after the date on which the alleged suspension, termination, or other adverse employment action occurred or was discovered by the employee through reasonable diligence.

Legal Action

If a board does not render a final decision before the 61st day after grievance procedures are initiated, the employee may elect to:

1. Exhaust a district's grievance procedures, in which case the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under Government Code Chapter 554; or
2. Terminate district grievance procedures and sue within the time lines established by Government Code 554.005 and 554.006.

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

Burden of Proof

If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation

of law, in which case the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.

Affirmative Defense

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.

Gov't Code 554.004

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. *Gov't Code 554.009*

Right to Report a Crime

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. *Education Code 37.148*

Protection for Reporting Child Abuse

A board or its agents may not suspend or terminate the employment of, or otherwise discriminate against, a professional employee who in good faith:

1. Reports child abuse or neglect to:
    a. The person's supervisor,
    b. An administrator of the facility where the person is employed,
    c. A state regulatory agency, or
    d. A law enforcement agency; or
2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

A person whose employment is suspended or terminated or who is otherwise discriminated against in violation of the foregoing may sue for injunctive relief, damages, or both. A district employee who has a cause of action under WHISTLEBLOWER PROTECTION may not bring an action under PROTECTION FOR REPORTING CHILD ABUSE.

Family Code 261.110

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*

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.

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), .1319(d)

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

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)

United States Constitution

The District shall take no action abridging the freedom of speech or the right of the people to petition the Board for redress of grievances. *U.S. Const. Amend. I, XIV*

The Board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when the Board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys. *Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819, 828 (1995); City of Madison v. Wis. Emp. Rel. Comm'n, 429 U.S. 167, 174 (1976); Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968)* [See DG]

Texas Constitution

Employees shall have the right, in a peaceable manner, to assemble together for their common good and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance. *Tex. Const. Art. I, Sec. 27*

There is no requirement that the Board negotiate or even respond to complaints. However, the Board must stop, look, and listen and must consider the petition, address, or remonstrance. *Prof'l Ass'n of College Educators v. El Paso County Cmty. [College] District, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref'd n.r.e.)*

Federal Laws

Section 504

A district that receives federal financial assistance, directly or indirectly, and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973. *34 C.F.R. 104.7(b), .11*

Americans with Disabilities Act

A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Code of Federal Regulations, Title 28, Part 35 (Americans with Disabilities Act regulations). *28 C.F.R. 35.107, .140*

Title IX

A district that receives federal financial assistance, directly or indirectly, shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 C.F.R. 106.8(b); North Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982)*

State Laws

Wages, Hours, Conditions of Work

The prohibition against collective bargaining and strikes [see DGA] does not impair the right of employees to present grievances concerning their wages, hours of employment, or conditions of work,

either individually or through a representative that does not claim the right to strike. *Gov't Code 617.005*

The term "conditions of work" should be construed broadly to include any area of wages, hours or conditions of employment, and any other matter that is appropriate for communications from employees to employer concerning an aspect of their relationship. *Atty. Gen. Op. JM-177 (1984); Corpus Christi Fed. of Teachers v. Corpus Christi Indep. Sch. Dist., 572 S.W.2d 663 (Tex. 1978)*

The statute protects grievances presented individually or individual grievances presented collectively. *Lubbock Prof'l Firefighters v. City of Lubbock, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.)*

Representative

The District cannot deny an employee's representative, including an attorney, the right to represent the employee at any stage of the grievance procedure, so long as the employee designates the representative and the representative does not claim the right to strike. *Lubbock Prof'l Firefighters v. City of Lubbock, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.); Sayre v. Mullins, 681 S.W.2d 25 (Tex. 1984)*

The District should meet with employees or their designated representatives at reasonable times and places to hear grievances concerning wages, hours of work, and conditions of work. The right to present grievances is satisfied if employees have access to those in a position of authority to air their grievances. However, that authority is under no legal compulsion to take action to rectify the matter. *Atty. Gen. Op. H-422 (1974); Corpus Christi Indep. Sch. Dist. v. Padilla, 709 S.W.2d 700 (Tex. App.—Corpus Christi, 1986, no writ)*

Employment Policy

The District's employment policy must provide each employee with the right to present grievances to the Board.

The policy may not restrict the ability of an employee to communicate directly with a member of the Board regarding a matter relating to the operation of the District, except that the policy may prohibit ex parte communication relating to:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and
2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the Board.

Education Code 11.1513

Grievance Policy

The District's grievance policy must permit an employee to report a grievance against a supervisor to a different supervisor if the employee alleges that the supervisor:

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

Telephone Representation

If the District's grievance policy provides for representation, the policy must permit an employee's representative to represent the employee through a telephone conference call at any formal grievance proceeding, hearing, or conference at which the employee is entitled to representation according to the policy. This provision applies to grievances under Education Code 11.171(a) and only if the District has the equipment necessary for a telephone conference call.

Education Code 11.171(a), (c)

Audio Recording

The District's grievance policy must permit an employee who reports a grievance to make an audio recording of any meeting or proceeding at which the substance of a grievance that complies with the policy is investigated or discussed. The implementation of an employee's authorization to make an audio recording may not result in a delay of any time line provided by the grievance policy. The District is not required to provide equipment for the employee to make the recording. *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 the District's grading policy applicable to the grade, as determined by the Board.

The Board's determination is not subject to appeal.

Education Code 28.0214

Open Meetings Act

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

Closed Meeting

The 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]

Record of Proceedings

An appeal of the Board's decision to the Commissioner shall be decided based on a review of the record developed at the District level. "Record" includes, at a minimum, an audible electronic

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

It is the District's responsibility to make and preserve the records of the proceedings before the Board. If the District fails to create and preserve the record without good cause, all substantial evidence issues that require missing portions of the record for resolution shall be deemed against the District. The record shall include:

1. A tape recording or a transcript of the hearing at the local level. If a tape recording is used:
    a. The tape recording must be complete, audible, and clear; and
    b. Each speaker must be clearly identified.
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the decision of the hearing examiner;
7. A tape recording or transcript of the oral argument before the Board; and
8. The decision of the Board.

19 TAC 157.1073(d)

Whistleblower Complaints

Before bringing suit, an employee who seeks relief under Government Code Chapter 554 (whistleblowers) must initiate action under the District's grievance or appeal procedures relating to suspension or termination of employment or adverse personnel action. *Gov't Code 554.006* [See DG]

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.

Employees shall not be prohibited from communicating with a member of the Board regarding District operations except when

Direct Communication with Board Members	communication between an employee and a Board member would be inappropriate because of a pending hearing or appeal related to the employee.
Formal Process	An employee may initiate the formal process described below by timely filing a written complaint form. 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. 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.
Freedom from Retaliation	Neither the Board nor any District employee shall unlawfully retaliate against an employee for bringing a concern or complaint.
Whistleblower Complaints	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. [See DG]
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 postmarked 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.
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	"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. The employee may designate a representative through written notice to the District at any level of this process. The representative may participate in person or by telephone conference call. 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.
Consolidating Complaints	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. 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.
Untimely Filings	All time limits shall be strictly followed unless modified by mutual written consent. 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.
Costs Incurred	Each party shall pay its own costs incurred in the course of the complaint.

Complaint and Appeal Forms

Complaints and appeals under this policy shall be submitted in writing on a form provided by the District.

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.

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.

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

Complaint forms must be filed:

1. Within 15 days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance; and
2. With the lowest level administrator who has the authority to remedy the alleged problem.

   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.

   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.

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.

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.

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.

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.

If the appeal notice is untimely, not on the District's form, or incomplete in any material way, the Superintendent, after consultation with the Board President, may dismiss the complaint and provide written notice of dismissal to the complainant.

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 presentation 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.

EDUCATORS' CODE OF ETHICS

The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. *19 TAC 247.1*

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 knowingly 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 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.

Standard 1.11. The educator shall not intentionally or knowingly misrepresent his or her employment history, criminal history, and/or disciplinary record when applying for subsequent employment.

Standard 1.12. The educator shall refrain from the illegal use or distribution of controlled substances and/or abuse of 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.

Standard 1.14. The educator shall not assist another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, if the educator knows or has probable cause to believe that such person engaged in sexual misconduct regarding a minor or student in violation of the law.

2. 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.

3. 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.

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, e-mail, 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:

a. The nature, purpose, timing, and amount of the communication;

b. The subject matter of the communication;

c. Whether the communication was made openly or the educator attempted to conceal the communication;

d. Whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;

e. Whether the communication was sexually explicit; and

f. 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

Note: This policy addresses harassment of district employees. For legally referenced material relating to discrimination and retaliation, see DAA(LEGAL). For harassment of students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.

Official Oppression

A public official commits a Class A misdemeanor if, while acting in his or her official or employment capacity, the official intentionally subjects another to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly. *Penal Code 39.03*

Harassment of Employees

Harassment on the basis of a protected characteristic is a violation of the federal anti-discrimination laws. A district has an affirmative duty, under Title VII, to maintain a working environment free of harassment on the basis of sex, race, color, religion, and national origin. *42 U.S.C. 2000e, et seq.; 29 CFR 1606.8(a), 1604.11*

Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment. *Pennsylvania State Police v. Suders, 542 U.S. 129 (2004)*

Title VII does not prohibit all verbal and physical harassment in the workplace. For example, harassment between men and women is not automatically unlawful sexual harassment merely because the words used have sexual content or connotations. *Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)*

Hostile Environment

Verbal or physical conduct based on a person's sex, race, color, religion, or national origin constitutes unlawful harassment when the conduct:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;
2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. Otherwise adversely affects an individual's employment opportunities.

Pennsylvania State Police v. Suders, 542 U.S. 129 (2004); Nat'l Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002); Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986); 29 CFR 1604.11, 1606.8

Quid Pro Quo

Conduct of a sexual nature also constitutes harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual.

29 CFR 1604.11(a)

Same-Sex Sexual Harassment

Same-sex sexual harassment constitutes sexual harassment. *Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)*

Harassment Policy

A district should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate penalties, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned. *29 CFR 1604.11(f)*

Corrective Action

A district is responsible for acts of unlawful harassment by fellow employees and by nonemployees if the district, its agents, or its supervisory employees knew or should have known of the conduct, unless the district takes immediate and appropriate corrective action. *29 CFR 1604.11(d), (e), 1606.8(d), (e)*

When no tangible employment action is taken, a district may raise the following affirmative defense:

1. That the district exercised reasonable care to prevent and promptly correct any harassing behavior; and

2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998)

Harassment of Unpaid Interns

A district commits an unlawful employment practice if sexual harassment of an unpaid intern occurs and the district or its agents or supervisors know or should have known that the conduct constituting sexual harassment was occurring, and fail to take immediate and appropriate corrective action. *Labor Code 21.1065*

Note: This policy addresses discrimination, harassment and retaliation involving District employees. For discrimination, harassment, and retaliation involving students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.

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 prohibited harassment, against any employee on the basis of race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of District policy.

Discrimination

Discrimination against an employee is defined as conduct directed at an employee on the basis of race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law, that adversely affects the employee's employment.

Harassment

Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee's race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee's work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee's performance, environment, or employment opportunities.

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.

Retaliation

The District prohibits retaliation against an employee who makes a claim alleging to have experienced prohibited discrimination or harassment, or another employee who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.

An employee who intentionally makes a false claim, offers false statements, or refuses to cooperate with a District investigation regarding harassment or discrimination is subject to appropriate discipline.

Prohibited Conduct

In this policy, the term "prohibited conduct" includes discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

Reporting Procedures

An employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should promptly 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 or gender, including sexual harassment, may be directed to the designated Title IX coordinator. [See DIA(EXHIBIT)]

ADA / Section 504 Coordinator

Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator. [See DIA(EXHIBIT)]

Superintendent

The Superintendent shall serve as coordinator for purposes of District compliance with all other antidiscrimination laws.

Alternative Reporting Procedures

An employee shall not be required to report prohibited conduct to the person alleged to have committed it. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

Timely Reporting

Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the District's ability to investigate and address the prohibited conduct.

Notice of Report

Any District supervisor who receives a report of prohibited conduct shall promptly notify the appropriate District official listed above and take any other steps required by this policy.

Investigation of the Report

The District may request, but shall not insist upon, a written report. If a report is made orally, the District official may reduce the report to written form.

Upon receipt or notice of a report, the District official should determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the District official should immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.

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.

Concluding the Investigation

The investigator may prepare a written report of the investigation. Any report should be filed with the District official overseeing the investigation.

District Action

If the results of an investigation indicate that prohibited conduct occurred, the District shall respond by taking disciplinary or corrective action.

The District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.

Confidentiality

Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

Appeal

A complainant who is dissatisfied with the outcome of the investigation may appeal through DGBA(LOCAL), beginning at the appropriate level.

The complainant may have a right to file a complaint with appropriate state or federal agencies.

Records Retention

Copies of reports alleging prohibited conduct, investigation reports, and related records shall be maintained by the District for a period of at least three years. [See CPC]

Access to Policy

This policy shall be distributed annually to District employees or made available on the District's website.

The District designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended:

Name: Cynthia Garcia

Position: Superintendent

Address: 410 West Avenue D, Driscoll, TX 78351

Telephone: (361) 387-7349

The District designates the following person to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended:

Name: Monica Morin

Position: Assistant Principal

Address: 410 West Avenue D, Driscoll, TX 78351

Telephone: (361) 387-7349, ext. 8104

The District may develop and implement a sexual harassment policy to be included in the District improvement plan. The District shall adopt and implement a dating violence policy to be included in the District improvement plan. *Education Code 37.083, 37.0831* [See BQ]

Sexual abuse of a student by an employee, when there is a connection between the physical sexual activity and the employee's duties and obligations as a District employee, violates a student's constitutional right to bodily integrity. Sexual abuse may include fondling, sexual assault, or sexual intercourse. *U.S. Const. Amend. 14; Doe v. Taylor ISD, 15 F.3d 443 (5th Cir. 1994)*

Sexual harassment of students may constitute discrimination on the basis of sex in violation of Title IX. *20 U.S.C. 1681; 34 CFR 106.11; Franklin v. Gwinnett County Schools, 503 U.S. 60 (1992)* [See FB regarding Title IX]

Definition of Sexual Harassment

Sexual harassment of students is conduct that is so severe, pervasive, and objectively offensive that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the school. Sexual harassment does not include simple acts of teasing and name-calling among school children, however, even when the comments target differences in gender. *Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)*

Employee- Student Sexual Harassment

A District official who has authority to address alleged harassment by employees on the District's behalf shall take corrective measures to address the harassment or abuse. *Gebser v. Lago Vista ISD, 118 S.Ct. 1989 524 U.S. 274 (1998); Doe v. Taylor ISD, 15 F.3d 443 (5th Cir. 1994)*

Student-Student Sexual Harassment

The District must reasonably respond to known student-on-student harassment where the harasser is under the District's disciplinary authority. *Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)*

Note: This policy addresses discrimination, harassment, and retaliation involving District students. For provisions regarding discrimination, harassment, and retaliation involving District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. Note that FFH shall be used in conjunction with FFI (bullying) for certain prohibited conduct.

Statement of Nondiscrimination

The District prohibits discrimination, including harassment, against any student on the basis of race, color, religion, sex, gender, national origin, disability, age, or any other basis prohibited by law. The District prohibits dating violence, as defined by this policy. Retaliation against anyone involved in the complaint process set out in this policy is a violation of District policy and is prohibited.

Discrimination

Discrimination against a student is defined as conduct directed at a student on the basis of race, color, religion, sex, gender, national origin, disability, age, or any other basis prohibited by law, that adversely affects the student.

Prohibited Harassment

Prohibited harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student's race, color, religion, sex, gender, national origin, disability, age, or any other basis prohibited by law that is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Prohibited harassment includes dating violence as defined by this policy.

Sexual Harassment

By an Employee

Sexual harassment of a student by a District employee includes both welcome and 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. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or

2. The conduct is so severe, persistent, or pervasive that it:

    a. Affects the student's ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student's educational opportunities; or

    b. Creates an intimidating, threatening, hostile, or abusive educational environment.

Romantic or inappropriate social relationships between students and District employees are prohibited. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See DH]

By Others

Sexual harassment of a student, including harassment committed by another student, includes unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;

2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or

3. Otherwise adversely affects the student's educational opportunities.

Necessary or permissible physical contact by an employee or other student such as assisting a child by taking the child's hand, comforting a child with a hug, or other physical contact not reasonably construed as sexual in nature is not sexual harassment.

Gender-Based Harassment

Gender-based harassment includes physical, verbal, or nonverbal conduct based on the student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity. For purposes of this policy, gender-based harassment is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;

2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or

3. Otherwise adversely affects the student's educational opportunities.

Dating Violence

Dating violence occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship Dating violence also occurs when a person commits these acts against a person in a marriage or dating relationship with the individual who is or was once in a marriage or dating relationship with the person committing the offense.

For purposes of this policy, dating violence is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Retaliation

The District prohibits retaliation against a student who claims to have experienced discrimination or harassment, as defined in this policy, or another student who, in good faith, makes a report of discrimination or harassment experienced by another student serves as a witness in any investigation under this policy, or otherwise participates in an investigation under this policy.

False Claim

A student who intentionally makes a false claim, offers false statements, or refuses to cooperate with a District investigation regarding discrimination or harassment under this policy is subject to appropriate discipline.

Prohibited Conduct

In this policy, the term "prohibited conduct" includes discrimination, harassment, dating violence, and retaliation as defined by this policy even if the conduct does not rise to the level of "unlawful" conduct.

Reporting Procedures

Student Report

Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, other District professional employee, or the appropriate District official listed in this policy.

Employee Report

Any District employee who suspects or receives notice that a student or group of students has or may have experienced prohibited

conduct shall promptly notify the appropriate District official listed in this policy and take any other steps required by this policy.

Definition of District Officials

For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, the Superintendent, and the campus administrator.

Title IX Coordinator

Reports of discrimination based on sex, including sexual harassment or gender-based harassment, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]

ADA / Section 504 Coordinator

Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator for students. [See FFH(EXHIBIT)]

Superintendent

The Superintendent shall serve as coordinator for purposes of all other nondiscrimination laws.

Alternative Reporting Procedures

A student 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.

A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall take action at a properly posted Board meeting that includes an agenda item related to a complaint against the Superintendent to appoint an appropriate person, who need not be a District employee to conduct an investigation.

Timely Reporting

Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the District's ability to investigate.

Notice to Parents

The District official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct by a District employee or another adult.

[For parental notification requirements regarding an allegation of educator misconduct with a student, see FFF.]

Notice to Other Officials

If the alleged perpetrator is not a District employee or other adult over whom the District can exercise any jurisdiction, the District official shall also promptly notify appropriate law enforcement or Child Protective Services if the official has reason to believe that the child has been or may be neglected or abused.

Investigation of the Report

The District may request, but shall not require, a written complaint or report of alleged prohibited conduct. If a report is made orally,

	the District official shall prepare a written report from the oral information.
Initial Assessment	Upon receipt or notice of the report, the District official shall determine whether the allegations, if proven, would constitute prohibited conduct, as defined by this policy. If so, the District official shall promptly authorize or undertake an investigation, except as provided below at Criminal Investigation. If no investigation is warranted under this policy, the District official shall make a determination under FFI, Freedom from Bullying, whether the alleged conduct would constitute bullying rather than discrimination, harassment, or retaliation. If so, the matter shall be referred to be handled under FFI. If the District official determines that the alleged conduct, if proven, would not be a violation of this policy or of policy FFI, the District official shall so notify the complainant/reporter in writing and dismiss the complaint.
Interim Action	If appropriate and regardless of whether a criminal or regulatory investigation regarding the alleged conduct is pending, the District official shall promptly take interim action calculated to address prohibited conduct or bullying prior to the completion of the District's investigation.
District Investigation	The investigation may be conducted by a District official or a designee, such as the campus principal, or by a third party designated by the District, such as an attorney. When appropriate, the campus principal shall be involved in or informed of the investigation.
Criminal Investigation	If a law enforcement or regulatory agency notifies the District that a criminal or regulatory investigation has been initiated, the District shall confer with the agency to determine if the District investigation would impede the criminal or regulatory investigation. The District shall proceed with its investigation only to the extent that it does not impede the ongoing criminal or regulatory investigation. After the law enforcement or regulatory agency has finished gathering its evidence, the District shall promptly resume its investigation.
Concluding the Investigation	Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the District to delay its investigation, 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.

The investigator shall prepare a written report of the investigation. The report shall include a determination of whether prohibited conduct or bullying occurred. The report shall be filed with the District official overseeing the investigation.

Notification of Outcome — Notification of the outcome of the investigation shall be provided to both parties in compliance with FERPA.

District Action — In no circumstance shall the District be required to inform the complainant of the specific disciplinary or corrective action taken.

Prohibited Conduct — If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary action in accordance with the Student Code of Conduct and may take corrective action reasonably calculated to address the conduct.

Bullying — If the results of the investigation indicate bullying occurred, the official shall refer to FFI for appropriate notice to parents and District action and to FDB for applicable transfer provisions.

Improper Conduct — If the investigation reveals improper conduct that was neither "prohibited conduct" nor "bullying," the District may nonetheless take appropriate disciplinary action consistent with the Student Code of Conduct or other corrective action to address the conduct.

Confidentiality — To the extent possible, the District shall endeavor to protect the privacy of the complainant, persons against whom a complaint is filed, and witnesses. However, limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

Appeal — A student or parent who is dissatisfied with the outcome of the investigation may appeal through FNG(LOCAL), beginning at the appropriate level, and shall also have the right to file a complaint with the United States Department of Education Office for Civil Rights.

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 retention schedules, but for no less than the minimum amount of time required by law. [See CPC]

Access to Policy — Information regarding this policy and any related procedures shall be included annually in the employee and student handbooks. The policy and procedures shall be posted on the District's website; a copy may also be obtained at each campus and the District's administrative offices.

Definitions

"Bullying":

Bullying

1. Means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct that satisfies the applicability requirements below and that:

    a. Has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property;

    b. Is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;

    c. Materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or

    d. Infringes on the rights of the victim at school; and

2. Includes cyberbullying.

Cyberbullying

"Cyberbullying" means bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an Internet website, or any other Internet-based communication tool.

Applicability

These provisions apply to:

1. Bullying that occurs on or is delivered to school property or to the site of a school-sponsored or school-related activity on or off school property;

2. Bullying that occurs on a publicly or privately owned school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity; and

3. Cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying:

    a. Interferes with a student's educational opportunities; or

b. Substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity.

Policy

The board shall adopt a policy, including any necessary procedures, concerning bullying that:

1. Prohibits the bullying of a student;
2. Prohibits retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;
3. Establishes a procedure for providing notice of an incident of bullying to:
   a. A parent or guardian of the alleged victim on or before the third business day after the date the incident is reported; and
   b. A parent or guardian of the alleged bully within a reasonable amount of time after the incident;
4. Establishes the actions a student should take to obtain assistance and intervention in response to bullying;
5. Sets out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;
6. Establishes procedures for reporting an incident of bullying, including procedures for a student to anonymously report an incident of bullying, investigating a reported incident of bullying, and determining whether the reported incident of bullying occurred;
7. Prohibits the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying, on the basis of that student's use of reasonable self-defense in response to the bullying; and
8. Requires that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

The policy and any necessary procedures must be included annually in the student and employee handbooks and in the district improvement plan under Education Code 11.252. [See BQ]

Internet Posting

The procedure for reporting bullying must be posted on a district's Internet Web site to the extent practicable.

Prevention and Mediation

A district may establish a district-wide policy to assist in the prevention and mediation of bullying incidents between students that:

1. Interfere with a student's educational opportunities; or
2. Substantially disrupt the orderly operation of a classroom, school, or school-sponsored or school-related activity.

Education Code 37.0832

Note: This policy addresses bullying of District students. For purposes of this policy, the term bullying includes cyberbullying.

For provisions regarding discrimination and harassment involving District students, see FFH. Note that FFI shall be used in conjunction with FFH for certain prohibited conduct. For reporting requirements related to child abuse and neglect, see FFG.

Bullying Prohibited

The District prohibits bullying, including cyberbullying, as defined by state law. Retaliation against anyone involved in the complaint process is a violation of District policy and is prohibited.

Examples

Bullying of a student could occur by physical contact or through electronic means and may include hazing, threats, taunting, teasing, confinement, assault, demands for money, destruction of property, theft of valued possessions, name calling, rumor spreading, or ostracism.

Retaliation

The District prohibits retaliation by a student or District employee against any person who in good faith makes a report of bullying, serves as a witness, or participates in an investigation.

Examples

Examples of retaliation may include threats, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

False Claim

A student who intentionally makes a false claim, offers false statements, or refuses to cooperate with a District investigation regarding bullying shall be subject to appropriate disciplinary action.

Timely Reporting

Reports of bullying shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to immediately report may impair the District's ability to investigate and address the prohibited conduct.

Reporting Procedures

To obtain assistance and intervention, any student who believes that he or she has experienced bullying or believes that another student has experienced bullying should immediately report the alleged acts to a teacher, school counselor, principal, or other District employee. The Superintendent shall develop procedures allowing a student to anonymously report an alleged incident of bullying.

Student Report

Employee Report

Any District employee who suspects or receives notice that a student or group of students has or may have experienced bullying shall immediately notify the principal or designee.

Report Format — A report may be made orally or in writing. The principal or designee shall reduce any oral reports to written form.

Notice of Report — When an allegation of bullying is reported, the principal or designee shall notify a parent of the alleged victim on or before the third business day after the incident is reported. The principal or designee shall also notify a parent of the student alleged to have engaged in the conduct within a reasonable amount of time after the incident is reported.

Prohibited Conduct — The principal or designee shall determine whether the allegations in the report, if proven, would constitute prohibited conduct as defined by policy FFH, including dating violence and harassment or discrimination on the basis of race, color, religion, sex, gender, national origin, or disability. If so, the District shall proceed under policy FFH. If the allegations could constitute both prohibited conduct and bullying, the investigation under FFH shall include a determination on each type of conduct.

Investigation of Report — The principal or designee shall conduct an appropriate investigation based on the allegations in the report. The principal or designee shall promptly take interim action calculated to prevent bullying during the course of an investigation, if appropriate.

Concluding the Investigation — Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the initial report alleging bullying; however, the principal or designee shall take additional time if necessary to complete a thorough investigation.

The principal or designee shall prepare a final, written report of the investigation. The report shall include a determination of whether bullying occurred, and if so, whether the victim used reasonable self-defense. A copy of the report shall be sent to the Superintendent or designee.

Notice to Parents — If an incident of bullying is confirmed, the principal or designee shall promptly notify the parents of the victim and of the student who engaged in bullying.

District Action

Bullying — If the results of an investigation indicate that bullying occurred, the District shall promptly respond by taking appropriate disciplinary action in accordance with the District's Student Code of Conduct and may take corrective action reasonably calculated to address the conduct. The District may notify law enforcement in certain circumstances.

Discipline — A student who is a victim of bullying and who used reasonable self-defense in response to the bullying shall not be subject to disciplinary action.

	The discipline of a student with a disability is subject to applicable state and federal law in addition to the Student Code of Conduct.
Corrective Action	Examples of corrective action may include a training program for the individuals involved in the complaint, a comprehensive education program for the school community, follow-up inquiries to determine whether any new incidents or any instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of areas where bullying has occurred, and reaffirming the District's policy against bullying.
Transfers	The principal or designee shall refer to FDB for transfer provisions.
Counseling	The principal or designee shall notify the victim, the student who engaged in bullying, and any students who witnessed the bullying of available counseling options.
Improper Conduct	If the investigation reveals improper conduct that did not rise to the level of prohibited conduct or bullying, the District may take action in accordance with the Student Code of Conduct or any other appropriate corrective action.
Confidentiality	To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation.
Appeal	A student who is dissatisfied with the outcome of the investigation may appeal through FNG(LOCAL), beginning at the appropriate level.
Records Retention	Retention of records shall be in accordance with CPC(LOCAL).
Access to Policy and Procedures	This policy and any accompanying procedures shall be distributed annually in the employee and student handbooks. Copies of the policy and procedures shall be posted on the District's website, to the extent practicable, and shall be readily available at each campus and the District's administrative offices.