Annual Policy Notification 2026–2027

All employees are asked to take a few minutes to review the attached information, which is intended to inform employees of governance requirements for the 2026–2027 school year. There are several links on the district's public website, www.houstonisd.org, to the Houston Independent School District (HISD) policy manual, *Policy Online*. It is the responsibility of all employees to know the district's governance including laws, board policies, and administrative regulations.

What are Legal Frameworks?

Legal frameworks are provided by the Texas Association of School Boards (TASB). They contain legal context, drawing from the national and state constitutions, federal and state law, case law, attorney general opinions, and rules from the Texas Education Agency (TEA) and State Board of Education (SBOE). The School Board does not approve these documents and district staff cannot change them.

What is Board Policy?

Policy conveys the School Board's intent and describes the district's programs and practices. Simple, direct statements are invaluable to district staff in fulfilling board mandates and help ensure that policies are readily understood by all. School Board approval is required, and policies are usually approved by the board after two readings.

What are Administrative Regulations and Exhibits?

A process or procedure implementing district policy is commonly defined as an administrative regulation. These documents are termed REGULATIONS by TASB. Not all regulations are in *Policy Online* or in the TASB format; for example, many are in department manuals. Forms or supplemental information related to policies and regulations are EXHIBITS. The School Board does not approve these documents.

Organization of HISD's Governance Documents

Governance documents, comprised of legal frameworks, local policies, administrative regulations, and exhibits, are organized according to the TASB codification system. The sections are devoted to the following areas of school governance:

A - Basic District Foundations
B - Local Governance
C - Business and Support Services
D - Personnel
E - Instruction
F - Students
G - Community and Governmental Relations

Changes may occur throughout the year, so departments and schools should routinely review and update generated material (forms, brochures, manuals, and all other relevant documentation) to ensure compliance with district governance.

After approval but before publication in *Policy Online*, revisions may be viewed in the Recently Updated Governance Documents section of https://www.houstonisd.org/board-governance/policies-regulations; the revisions are shown as tracked changes.

Accessing Governance Documents

Governance documents (i.e., legal frameworks, local policies, administrative regulations, and exhibits) are incorporated into a single online manual called *Policy Online*, except for regulations contained elsewhere (such as the *Finance Procedures Manual*). Searches can be performed by governance code or keyword.

The following specific district governance should be reviewed annually by all employees as changes may occur throughout the year. Leaders of HISD are responsible for ensuring their employees have access to district policies that may affect them. Not every employee has access to a computer with an internet connection, so leaders are asked to share the documents with employees who lack electronic access because all employees are responsible for reviewing policies annually.

If you have any questions or concerns related to governance, contact Policy Management via e-mail (PolicyManagement@houstonisd.org). Electronic copies of all referenced policies are available through the embedded links in this document.

> **Note:** If a "series" is indicated, please review all documents with the policy code identifier that begins with the two or three letters shown. This may include a legal framework, a local policy, one or more regulations, one or more exhibits, or a subset of these.

For All Employees

The School Board has set forth a vision and goals for the whole district. All employees should be working in support of the vision and goals.

The governance documents referenced below are relevant to all employees and should be reviewed by everyone annually.

All employees are responsible for reviewing policies annually. Electronic copies of all referenced policies are available by clicking the links.

Discrimination, Harassment, and Retaliation

To support a safe environment and common decency, all employees need to be versed in discrimination, harassment, bullying, and retaliation governance. It is imperative that those who interact with students be aware of their responsibilities to respond immediately and appropriately to allegations. Relevant policies include:

- DH series, DHA(LEGAL), FO series, and FNC legal framework—Governance documents addressing standards of conduct for employees and students.
- DIA series, FB series, and FFH series—Governance documents regarding discrimination, harassment, and retaliation, including the relevant exhibits containing the contact information for reporting such behavior, for employees and students.

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Bullying

The FFI series addresses student bullying, including cyberbullying, and establishes procedures for reporting, investigating, and dealing with bullying of district students. Additionally, because this conduct may rise to the level of discrimination or harassment, if based on a protected characteristic, this policy should be reviewed annually, along with FFH(LOCAL) and FFH(EXHIBIT). DH(LOCAL), DIA(LOCAL), DIA3(REGULATION), and CQ5(REGULATION) are policies and regulations prohibiting bullying by employees.

Child Abuse and Neglect

Education commissioner rules require all employees to be aware of how and to whom to report suspicion or knowledge of child abuse or neglect. Please review the Texas Administrative Code (TAC) rules on reporting child abuse and neglect in 19 TAC 103.1401 to familiarize yourself with the procedures. The toll-free phone number of the Texas Department of Family and Protective Services is **1-800-252-5400**. Policy information related to these concerns may be found at:

- BQ(LEGAL)—Framework referring to the district plan for addressing sexual abuse and other maltreatment of children;
- DH series—Governance documents addressing employee standards of conduct;
- DHA(LEGAL)—The *Educator's Code of Ethics*;
- FFG series—Governance documents addressing child abuse and neglect, trafficking, and maltreatment of students; and
- GRA series—Governance documents addressing child abuse investigations.

Crisis Intervention

The district has a program that supports early mental health intervention and suicide prevention as outlined in the FFB series.

Drug-free Workplace

State and federal laws require all new employees to review district policies establishing a drug-free workplace. In HISD, these policies are found at DH(LOCAL) and DHE(LOCAL).

Standards of Conduct and Conflict of Interest

DHA(LEGAL) includes the *Educator's Code of Ethics*, which is codified in state law and applies to all Texas educators; it is enforced by the State Board for Educator Certification (SBEC). HISD's employee conduct policy, DH(LOCAL), carries serious consequences governing employee conduct. Conflict of interest arises when there is incompatibility between professional duties and personal interests. The following governance defines conduct that constitutes a conflict of interest and specifies the sanctions for violations: the DH series; CAA series; CDC series; and DBD series for all employees. Please see DBD2(REGULATION) for the annual disclosure process.

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Technology and Technology Resources

The district has an obligation to protect student and employee information. Access to the district's technology resources including e-mail is a privilege and provided for academic and district business purposes. Altering software configurations and/or disabling security features are prohibited. Relevant policies include:

- CQ series—Governance documents addressing technology for employees and students.
- CQD series—Governance documents addressing the use of artificial intelligence by employees and students.
- CY series—Governance documents addressing copyright restrictions for employees and students.

Social Media

The communication and collaboration inherent in the use of social media can increase student engagement and expand the district's instructional resources when used responsibly and safely. While the district believes there are significant educational advantages to using social media, there is governance in place to ensure the use of social media supported by the district is safe and adheres to federal and state laws as well as board policy.

The following governance defines social media use:

- DH(LOCAL), *Employee Standards of Conduct*
- DHA(LEGAL), *Employee Standards of Conduct: Educator Code of Ethics*
- CQ(LOCAL), *Technology Resources*
- CY(LOCAL), *Intellectual Property*

Equal Educational Opportunity

Under Title II of the Americans with Disabilities Act (ADA), HISD ensures communications with individuals who have hearing, vision, speech, or other sensory impairments are as effective as communications with others. When an auxiliary aid or service is required to assist with communication, HISD will provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice and must give primary consideration to the choice expressed by the individual. Primary consideration means that the district must honor the choice, unless it can demonstrate that another equally effective means of communication is available. FB1(REGULATION) and FB2(REGULATION) address effective communication under Title II.

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Employment Policies

Texas Education Code (TEC) 21.204(d) requires the School Board to provide teachers, at the teacher's request, a copy of the board's employment policies. This law applies only to employees with educator term contracts, but all employees should review the district's employment policies and related governance documents. These documents include:

DAA, *Employment Objectives: Equal Employment Opportunity*

DBAA, *Employment Requirements and Restrictions: Pre-Employment Reviews*

DBB, *Medical Examinations and Communicable Diseases*

DBD, *Employment Requirements and Restrictions: Conflict of Interest*

DC series, *Employment Practices*

DCA, *Employment Practices: Probationary Contracts*

DCB, *Employment Practices: Term Contracts*

DCC, *Employment Practices: Continuing Contracts*

DEA series, *Compensation and Benefits: Compensation Plan*

DEAA, *Compensation Plan: Incentives and Stipends*

DEC series, *Compensation and Benefits: Leaves and Absences*

DECA series, *Leaves and Absences: Family and Medical Leave*

DECB, *Leaves and Absences: Military Leave*

DF series, *Termination of Employment*

DFAA, *Probationary Contracts: Suspension/Termination During Contract*

DFAB, *Probationary Contracts: Termination at End of Year*

DFAC, *Probationary Contracts: Return to Probationary Status*

DFBA series, *Term Contracts: Suspension/Termination During Contract*

DFD, *Termination of Employment: Hearings Before Hearing Examiner*

DFE, *Termination of Employment: Resignation*

DFF, *Termination of Employment: Reduction in Force*

DFFA, *Reduction in Force: Financial Exigency*

DFFB, *Reduction in Force: Program Change*

DG, *Employee Rights and Privileges*

DGBA, *Personnel-Management Relations: Employee Complaints/Grievances*

DH series, *Employee Standards of Conduct*

DHA, *Employee Standards of Conduct: Educator Code of Ethics*

DHB, *Employee Standards of Conduct: Reports to State Board for Educator Certification*

DHE, *Employee Standards of Conduct: Searches and Alcohol/Drug Testing*

DI series, *Employee Welfare*

DIA, *Employee Welfare: Freedom from Discrimination, Harassment, and Retaliation*

DK, *Assignment and Schedules*

DMA, *Professional Development: Required Staff Development*

DN series, *Performance Appraisal*

DNA, *Performance Appraisal: Evaluation of Teachers*

DNB, *Performance Appraisal: Evaluation of Campus Administrators*

Changes may occur throughout the year, so departments and schools should routinely review and update generated material (forms, brochures, manuals, and all other relevant documentation) to ensure compliance with district governance.

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For Employees Who Enforce Meal Policies

Enforcement of Meal Policies

The U.S. Department of Agriculture regulates requirements regarding collecting payment for school meals; notifying families of low or negative balances; and enforcing other aspects of the meal charge policy. See the CO series regarding school meals. For more information, see the USDA's memo, *Unpaid Meal Charges: Guidance and Q&As*.

For Teachers and Administrators

Information Pertaining to Student Discipline

TEC 37.018 requires that each teacher and administrator review Chapter 37, sections 37.001 through 37.023, dealing with student discipline, as well as all relevant local district policies. Therefore, in addition to the Chapter 37 sections, please review the FN series and the FO series. Teachers and administrators should also review the *Student Code of Conduct* as approved by the School Board and the *Student Handbook*.

> **Note:** TEC 37.001 requires the *Student Code of Conduct* to be posted and prominently displayed at each school campus or to be made available for review in the campus principal's office.

Information Pertaining to Field Trips

All students shall be invited to participate in school-sponsored field trips and other enrichment activities. The district has adopted reasonable procedures for waiving a deposit or fee if a student or the student's parent or guardian is unable to pay it. See FP(LOCAL).

> **Note:** FP(LEGAL) requires posting of the process for waiving fees in a central location in each school facility as well as the school and student handbooks.

Chapter 103. Health and Safety

Subchapter EE. Commissioner's Rules on Prevention, Awareness, and Reporting of Child Abuse or Neglect, Including Trafficking of a Child

§103.1401. Reporting Child Abuse or Neglect, Including Trafficking of a Child.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Child abuse or neglect--The definition of child abuse or neglect includes the trafficking of a child in accordance with Texas Education Code (TEC), §38.004.

(2) Other maltreatment--This term has the meaning assigned by Human Resources Code, §42.002.

(3) Trafficking of a child--This term has the meaning assigned by Texas Penal Code, §20A.02(a)(5), (6), (7), or (8).

(b) The board of trustees of a school district or governing body of an open-enrollment charter school shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements outlined in Texas Family Code, Chapter 261.

(1) The policies must require that every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect submit a written or oral report to at least one of the following authorities within 48 hours or less, as determined by the board of trustees, after learning of facts giving rise to the suspicion:

(A) a local or state law enforcement agency;

(B) the Texas Department of Family and Protective Services, Child Protective Services Division;

(C) a local office of Child Protective Services, where available; or

(D) the state agency that operates, licenses, certifies, or registers the facility in which the alleged child abuse or neglect occurred.

(2) The policies must require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

(A) penalties under Texas Penal Code, §39.06; Texas Family Code, §261.109; and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) for failure to submit a required report of child abuse or neglect;

(B) applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including the following:

(i) Texas Family Code, §261.302 and §261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

(ii) Texas Family Code, §261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator;

(C) immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

(D) oral reports made to the Texas Department of Family and Protective Services are recorded;

(E) confidentiality provisions relating to reports of suspected child abuse or neglect, including the following:

(i) the requirement for the individual making the report to provide his or her name and telephone number;

(ii) the requirement for the individual making the report to provide his or her home address or, if the individual making the report is a school employee, agent, or contractor, provide his or her business address and profession; and

(iii) the limited circumstances under which the identity of the individual making a report may be disclosed;

(F) any disciplinary action that may result from noncompliance with the district's reporting policy;

(G) the prohibition under TEC, §26.0091, against using or threatening to use the refusal to consent to administration of a psychotropic drug to a child or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, except as authorized by TEC, §26.0091; and

(H) the Department of Family and Protective Services is not authorized to accept an anonymous report of abuse or neglect.

(3) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, trafficking, and other maltreatment of children. The policy must be included in any informational handbook provided to students and parents and must address the following:

(A) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;

(B) actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and

(C) available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

(4) The policies must be consistent with Texas Family Code, Chapter 261, and 40 TAC Chapter 700 (relating to Child Protective Services) regarding investigations by the Texas Department of Family and Protective Services, including regulations governing investigation of abuse by school personnel and volunteers.

(5) The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in paragraph (1) of this subsection.

(6) The policies must include the current toll-free telephone number of the Texas Department of Family and Protective Services.

(7) The policies must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by the Texas Department of Family and Protective Services.

(8) The policies must include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

(c) The policies required by this section and adopted by the board of trustees shall be distributed to all school personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by the board of trustees.

(d) Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with

significant cognitive disabilities, must be provided as a part of new employee orientation to all new school district and open-enrollment charter school employees as required by TEC, §38.0041.

(1) The training must include:

(A) factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;

(B) warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and

(E) information on community organizations that have relevant research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff, students, and parents.

(2) Each school district and open-enrollment charter school must maintain records that include the name of each staff member who participated in training.

(3) To the extent that resources are not yet available from the Texas Education Agency or commissioner of education, school district and open-enrollment charter schools shall implement the policies and trainings with existing or publicly available resources. The school district or open-enrollment charter school may also work in conjunction with a community organization to provide the training at no cost to the district or charter school.

(e) Using a format and language that is clear, simple, and understandable to students, each public school and open-enrollment charter school shall post, in English and in Spanish:

(1) the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number;

(2) instructions to call 911 for emergencies; and

(3) directions for accessing the Texas Department of Family and Protective Services website (www.txabusehotline.org) for more information on reporting abuse, neglect, and exploitation.

(f) School districts and open-enrollment charter schools shall post the information specified in subsection (e) of this section at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.

Statutory Authority: The provisions of this §103.1401 issued under the Texas Education Code, §§37.086, as amended by SB 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

Source: The provisions of this §103.1401 adopted to be effective December 11, 2024, 49 TexReg 9974.

§103.1403. Required Signage Pertaining to Criminal Offenses of Human Trafficking.

(a) When used in this section, the term "school" means a public primary or secondary school.

(b) Each public school shall post warning signs in a conspicuous place reasonably likely to be viewed by all school employees and visitors.

(c) Each warning sign must:

(1) describe the offense of trafficking in persons as provided under Texas Penal Code, §20A.02(a). The sign must emphasize that an offense under Texas Penal Code, §20A.02, is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(A) on the premises of or within 1,000 feet of the premises of:

(i) a school;

(ii) a juvenile detention facility;

(iii) a post-adjudication secure correctional facility;

(iv) a shelter or facility operating as a residential treatment center that serves runaway youth, foster children, people who are homeless, or persons subjected to human trafficking, domestic violence, or sexual assault;

(v) a community center offering youth services and programs;

(vi) a child-care facility, as defined by Human Resources Code, §42.002; or

(vii) an institution of higher education or private or independent institution of higher education, as defined by Texas Education Code, §61.003; or

(B) on premises or within 1,000 feet of premises where:

(i) an official school function was taking place; or

(ii) an event sponsored or sanctioned by the University Interscholastic League was taking place;

(2) be written in English and Spanish;

(3) be at least 8.5 by 11 inches in size; and

(4) be properly maintained to ensure readability and protection from the elements for outdoor signs.

Statutory Authority: The provisions of this §103.1403 issued under the Texas Education Code, §§37.086, as amended by SB 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

Source: The provisions of this §103.1403 adopted to be effective December 11, 2024, 49 TexReg 9974.

EDUCATION CODE

TITLE 2. PUBLIC EDUCATION

SUBTITLE G. SAFE SCHOOLS

CHAPTER 37. DISCIPLINE; LAW AND ORDER

SUBCHAPTER A. ALTERNATIVE SETTINGS FOR BEHAVIOR MANAGEMENT

Sec. 37.001. STUDENT CODE OF CONDUCT. (a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

(1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, disciplinary alternative education program, or vehicle owned or operated by the district;

(2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program, which must expressly provide that an appropriate administrator may place a student in a disciplinary alternative education program for the first-time offense of possession or use of a nicotine delivery product or e-cigarette, as defined by Section 161.081, Health and Safety Code;

(3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;

(4) specify that consideration will be given, as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:

(A) self-defense;

(B) intent or lack of intent at the time the student engaged in the conduct;

(C) a student's disciplinary history;

(D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;

(E) a student's status in the conservatorship of the Department of Family and Protective Services; or

(F) a student's status as a student who is homeless;

(5) provide guidelines for setting the length of a term of:

(A) a removal under Section 37.006; and

(B) an expulsion under Section 37.007;

(6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;

(7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions;

(8) provide, as appropriate for students at each grade level, methods, including options, for:

(A) managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district;

(B) disciplining students; and

(C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists;

(9) include an explanation of the provisions regarding refusal of entry to or ejection from district property under Section 37.105, including the appeal process established under Section 37.105(h); and

(10) include a statement regarding whether the board has adopted a policy for parental involvement in school disciplinary placements under Section 37.0014 and, if so, the provisions of the policy.

(b) In this section:

(1) "Bullying" has the meaning assigned by Section 37.0832.

(2) "Harassment" means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety.

(3) "Hit list" means a list of people targeted to be harmed, using:

(A) a firearm, as defined by Section 46.01(3), Penal Code;

(B) a knife, as defined by Section 46.01(7), Penal Code; or

(C) any other object to be used with intent to cause bodily harm.

(4) "Student who is homeless" has the meaning assigned to the term

"homeless children and youths" under 42 U.S.C. Section 11434a.

(b-1) The methods adopted under Subsection (a)(8) must provide that a student who is enrolled in a special education program under Subchapter A, Chapter 29, may not be disciplined in a manner that results in a change in the student's educational placement for conduct prohibited in accordance with Subsection (a)(7) until an admission, review, and dismissal committee meeting has been held to review the conduct.

(c) Once the student code of conduct is promulgated, any change or amendment must be approved by the board of trustees.

(d) Each school year, a school district shall provide parents notice of and information regarding the student code of conduct.

(e) Except as provided by Section 37.007(e), this subchapter does not require the student code of conduct to specify a minimum term of a removal under Section 37.006 or an expulsion under Section 37.007.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 2, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 4, 30, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 504 (H.B. 603), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 920 (H.B. 283), Sec. 3, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 897 (H.B. 171), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 776 (H.B. 1942), Sec. 5, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 487 (S.B. 1541), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1409 (S.B. 1114), Sec. 3, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 924 (S.B. 1553), Sec. 4, eff. June 15, 2017.

Acts 2019, 86th Leg., R.S., Ch. 167 (H.B. 811), Sec. 1, eff. May 24, 2019.

Acts 2019, 86th Leg., R.S., Ch. 167 (H.B. 811), Sec. 2, eff. May 24, 2019.

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 5, eff. June 20, 2025.

Sec. 37.0011. USE OF CORPORAL PUNISHMENT. (a) In this section, "corporal punishment" means the deliberate infliction of physical pain by

hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline. The term does not include:

(1) physical pain caused by reasonable physical activities associated with athletic training, competition, or physical education; or

(2) the use of restraint as authorized under Section 37.0021.

(b) If the board of trustees of an independent school district adopts a policy under Section 37.001(a)(8) under which corporal punishment is permitted as a method of student discipline, a district educator may use corporal punishment to discipline a student unless the student's parent or guardian or other person having lawful control over the student has previously provided a written, signed statement prohibiting the use of corporal punishment as a method of student discipline.

(c) To prohibit the use of corporal punishment as a method of student discipline, each school year a student's parent or guardian or other person having lawful control over the student must provide a separate written, signed statement to the board of trustees of the school district in the manner established by the board.

(d) The student's parent or guardian or other person having lawful control over the student may revoke the statement provided to the board of trustees under Subsection (c) at any time during the school year by submitting a written, signed revocation to the board in the manner established by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 691 (H.B. 359), Sec. 1, eff. September 1, 2011.

Sec. 37.0012. DESIGNATION OF CAMPUS BEHAVIOR COORDINATOR. (a) A single person at each campus must be designated to serve as the campus behavior coordinator. The person designated may be the principal of the campus or any other campus administrator selected by the principal.

(a-1) Additional school staff members may assist the campus behavior coordinator in the performance of the campus behavior coordinator's duties, provided that the campus behavior coordinator personally verifies that all aspects of this subchapter are appropriately implemented.

(b) The campus behavior coordinator is primarily responsible for maintaining student discipline and the implementation of this subchapter.

(b-1) The campus behavior coordinator shall:

(1) monitor disciplinary referrals;

(2) report to the campus's threat assessment and safe and supportive school team established under Section 37.115 any student who engages in conduct that contains the elements of:

(A) the offense of terroristic threat under Section 22.07,

Penal Code;

(B) the offense of unlawfully carrying weapons under Section 46.02, Penal Code;

(C) an offense relating to prohibited weapons under Section 46.05, Penal Code; or

(D) the offense of exhibiting, using, or threatening to exhibit or use a firearm under Section 37.125 of this code; and

(3) report to the campus's threat assessment and safe and supportive school team established under Section 37.115 any concerning student behaviors or behavioral trends that may pose a serious risk of violence to the student or others.

(c) Except as provided by this chapter, the specific duties of the campus behavior coordinator may be established by campus or district policy. Unless otherwise provided by campus or district policy:

(1) a duty imposed on a campus principal or other campus administrator under this subchapter shall be performed by the campus behavior coordinator; and

(2) a power granted to a campus principal or other campus administrator under this subchapter may be exercised by the campus behavior coordinator.

(d) The campus behavior coordinator shall promptly notify a student's parent or guardian as provided by this subsection if under this subchapter the student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer. A campus behavior coordinator must comply with this subsection by:

(1) promptly contacting the parent or guardian by telephone or in person; and

(2) making a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian.

(e) If a parent or guardian entitled to notice under Subsection (d) has not been reached by telephone or in person by 5 p.m. of the first business day after the day the disciplinary action is taken, a campus behavior coordinator shall mail written notice of the action to the parent or guardian at the parent's or guardian's last known address.

(f) If a campus behavior coordinator is unable or not available to promptly provide notice under Subsection (d), the principal or other designee shall provide the notice.

Added by Acts 2015, 84th Leg., R.S., Ch. 1267 (S.B. 107), Sec. 1, eff. June

20, 2015.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 6, eff. June 20, 2025.

Sec. 37.0013. POSITIVE BEHAVIOR PROGRAM. (a) Each school district and open-enrollment charter school may develop and implement a program, in consultation with campus behavior coordinators employed by the district or school and representatives of a regional education service center, that provides a disciplinary alternative for a student enrolled in a grade level below grade three who engages in conduct described by Section 37.005(a) and is not subject to Section 37.005(c). The program must:

(1) be age-appropriate and research-based;

(2) provide models for positive behavior;

(3) promote a positive school environment;

(4) provide alternative disciplinary courses of action that do not rely on the use of in-school suspension, out-of-school suspension, or placement in a disciplinary alternative education program to manage student behavior; and

(5) provide behavior management strategies, including:

(A) positive behavioral intervention and support;

(B) trauma-informed practices;

(C) social and emotional learning;

(D) a referral for services, as necessary; and

(E) restorative practices.

(b) Each school district and open-enrollment charter school may annually conduct training for staff employed by the district or school on the program adopted under Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 696 (H.B. 674), Sec. 1, eff. June 12, 2017.

Sec. 37.0014. POLICY FOR PARENTAL INVOLVEMENT IN SCHOOL DISCIPLINARY PLACEMENTS. (a) The board of trustees of a school district may adopt a policy for parental involvement in school disciplinary placements.

(b) A policy adopted under this section must provide for:

(1) the principal, campus behavior coordinator, or other appropriate administrator to notify the parent of or person standing in parental relation to a student who has been placed in a disciplinary

alternative education program or expelled of the parent's or person's right to request a behavioral agreement that specifies the responsibilities of the parent or person and student to be developed; and

(2) if a behavioral agreement described by Subdivision (1) is developed and the student and the student's parent or person standing in parental relation comply with the terms of the agreement, subject to Subsection (c), a reduction in the period of the disciplinary placement imposed on the student.

(c) A reduction in the period of a disciplinary placement under Subsection (b)(2) does not entitle the student for whom the period of placement was reduced to a different disciplinary placement. The reduction in the period of a disciplinary placement is at the sole discretion of the principal, campus behavior coordinator, or other appropriate administrator and may be revoked or amended at any time if the student or the student's parent or person standing in parental relation does not comply with the terms of the behavioral agreement developed under Subsection (b)(1).

(d) A behavioral agreement developed under Subsection (b)(1) must include in writing the specific reduction in the period of the student's disciplinary placement with which the student will be credited if the student and the student's parent or person standing in parental relation comply with the terms of the behavioral agreement.

(e) The commissioner shall adopt a model behavioral agreement for use by school districts in developing a behavioral agreement under Subsection (b)(1).

Added by Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 7, eff. June 20, 2025.

Sec. 37.002. REMOVAL BY TEACHER. (a) A teacher may send a student to the campus behavior coordinator's office to maintain effective discipline in the classroom. The campus behavior coordinator shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001 that can reasonably be expected to improve the student's behavior before returning the student to the classroom. If the student's behavior does not improve, the campus behavior coordinator shall employ alternative discipline management techniques, including any progressive interventions designated as the responsibility of the campus behavior coordinator in the student code of conduct.

(b) A teacher may remove from class a student who:

(1) repeatedly interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn;

(2) demonstrates behavior that is unruly, disruptive, or abusive

toward the teacher, another adult, or another student; or

(3) engages in conduct that constitutes bullying, as defined by Section 37.0832.

(b-1) A teacher may document any conduct by a student that does not conform to the student code of conduct adopted under Section 37.001 and may submit that documentation to the principal. A school district may not discipline a teacher on the basis of documentation submitted under this subsection.

(b-2) A teacher, campus behavior coordinator, or other appropriate administrator shall notify a parent or person standing in parental relation to a student of the removal of a student under this section.

(b-3) Subject to Sections 28.0022(a)(2) and (d), a teacher may remove a student from class under Subsection (b) of this section based on a single incident of behavior described by Subsection (b)(1), (2), or (3).

(c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's written consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available and, not later than the third class day after the day on which the student was removed from class, a conference in which the teacher has been provided an opportunity to participate has been held in accordance with Section 37.009(a). The principal may not return the student to that teacher's class unless the teacher provides written consent for the student's return or a return to class plan has been prepared for that student. The principal may only designate an employee of the school whose primary duties do not include classroom instruction to create a return to class plan. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.

(c-1) A return to class plan required under Subsection (c) must be created before or at the conference described by that subsection. A plan created before the conference must be discussed at the conference.

(c-2) The commissioner shall adopt a model return to class plan for use by a school district in creating a return to class plan for a student under Subsection (c).

(d) A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's written consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available and a conference in which the teacher has been provided an

opportunity to participate has been held in accordance with Section 37.009(a). If the teacher removed the student from class because the student has engaged in the elements of any offense listed in Section 37.006(a)(2)(B) or Section 37.007(a)(2)(A) or (b)(2)(C) against the teacher, the student may not be returned to the teacher's class without the teacher's written consent. The teacher may not be coerced to consent.

(e) A student who is sent to the campus behavior coordinator's or other administrator's office under Subsection (a) or removed from class under Subsection (b) is not considered to have been removed from the classroom for the purposes of reporting data through the Public Education Information Management System (PEIMS) or other similar reports required by state or federal law.

(e-1) A student may appeal the student's removal from class under this section to:

(1) the school's placement review committee established under Section 37.003; or

(2) the safe and supportive school team established under Section 37.115, in accordance with a district policy providing for such an appeal to be made to the team.

(e-2) The principal, campus behavior coordinator, or other appropriate administrator shall, at the conference required under Section 37.009(a), notify a student who has been removed from class under this section and the parent of or person standing in parental relation to the student of the student's right to appeal under Subsection (e-1).

(f) Section 37.004 applies to the removal or placement under this section of a student with a disability who receives special education services.

(f-1) The principal, campus behavior coordinator, or other appropriate administrator shall, at the conference required under Section 37.009(a), notify a student who has been removed from class under this section and the parent of or person standing in parental relation to the student of the student's right to appeal under Subsection (f).

(g) Section 37.004 applies to the removal or placement under this section of a student with a disability who receives special education services.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 5, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 504 (H.B. 603), Sec. 2, eff. June 17, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1267 (S.B. 107), Sec. 2, eff. June 20, 2015.

Acts 2019, 86th Leg., R.S., Ch. 630 (S.B. 1451), Sec. 3, eff. June 10, 2019.

Acts 2025, 89th Leg., R.S., Ch. 1065 (H.B. 2), Sec. 3.10, eff. June 20, 2025.

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 8, eff. June 20, 2025.

Sec. 37.0021. USE OF CONFINEMENT, RESTRAINT, SECLUSION, AND TIME-OUT. (a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29. A student with a disability who receives special education services under Subchapter A, Chapter 29, may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

(b) In this section:

(1) "Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.

(2) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

(A) is designed solely to seclude a person; and

(B) contains less than 50 square feet of space.

(3) "Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

(4) "Law enforcement duties" means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure.

(5) "Taser" means a device manufactured, sold, or distributed by Taser International, Incorporated, that is intended, designed, made, or adapted to incapacitate a person by inflicting an electrical charge through the emission of a projectile or conductive stream. The term, for purposes of this section, includes a similar device manufactured, sold, or distributed by another person.

(c) A school district employee or volunteer or an independent

contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of a school district, or in a placement or facility to which the following law, rules, or regulations apply:

(1) the Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;

(2) 40 T.A.C. Sections 720.1001-720.1013; or

(3) 25 T.A.C. Section 412.308(e).

(d) Subject to Subsection (j), the commissioner by rule shall adopt procedures for the use of restraint and time-out by a school district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:

(1) be consistent with:

(A) professionally accepted practices and standards of student discipline and techniques for behavior management; and

(B) relevant health and safety standards;

(2) establish crisis prevention and intervention training requirements for school district personnel, including:

(A) standards for determining which personnel, including support staff and law enforcement, should receive the training and the amount of training each of those individuals should receive, prioritizing the amount of training and training that includes physical interventions based on the individual's risk of being involved in a student-involved crisis situation;

(B) recommendations for the minimum frequency of crisis prevention and intervention training as included in the continuing education and training clearinghouse published under Section 21.4514; and

(C) provisions allowing for any training required under this subsection to be combined with or substituted for other related required training if a majority of the content in the related training addresses content in the training required under this subsection, including:

(i) trauma-informed care training required under Section 38.036; and

(ii) training on strategies for establishing and maintaining positive relationships among students, including conflict resolution, required under Section 21.451(d)(3)(B); and

(3) require a school district to:

(A) provide written notification to the student's parent or

person standing in parental relation to the student for each use of restraint that includes:

(i) the name of the student;

(ii) the name of the district employee or volunteer or independent contractor of the district who administered the restraint;

(iii) the date of the restraint;

(iv) the time that the restraint started and ended;

(v) the location of the restraint;

(vi) the nature of the restraint;

(vii) a description of the activity in which the student was engaged immediately preceding the use of the restraint;

(viii) the behavior of the student that prompted the restraint;

(ix) any efforts made to de-escalate the situation and any alternatives to restraint that were attempted;

(x) if the student has a behavior improvement plan or a behavioral intervention plan, whether the plan may need to be revised as a result of the behavior that led to the restraint; and

(xi) if the student does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an admission, review, and dismissal committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student;

(B) include in a student's special education eligibility school records:

(i) a copy of the written notification provided to the student's parent or person standing in parental relation to the student under Paragraph (A);

(ii) information on the method by which the written notification was sent to the parent or person; and

(iii) the contact information for the parent or person to whom the district sent the notification; and

(C) if the student has a behavior improvement plan or behavioral intervention plan, document each use of time-out prompted by a behavior of the student specified in the student's plan, including a description of the behavior that prompted the time-out.

(e) In the case of a conflict between a rule adopted under Subsection (d) and a rule adopted under Subchapter A, Chapter 29, the rule adopted under

Subsection (d) controls.

(f) For purposes of this subsection, "weapon" includes any weapon described under Section 37.007(a)(1). This section does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

(1) the student possesses a weapon; and

(2) the confinement is necessary to prevent the student from causing bodily harm to the student or another person.

(g) This section and any rules or procedures adopted under this section do not apply to:

(1) a peace officer performing law enforcement duties, except as provided by Subsection (i);

(2) juvenile probation, detention, or corrections personnel; or

(3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

(h) This section and any rules or procedures adopted under this section apply to a peace officer only if the peace officer:

(1) is employed or commissioned by a school district; or

(2) provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency.

(i) A school district shall report electronically to the agency, in accordance with standards provided by commissioner rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. A report submitted under this subsection must be consistent with the requirements adopted by commissioner rule for reporting the use of restraint involving students with disabilities.

(j) A peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity may not restrain or use a chemical irritant spray or Taser on a student enrolled in fifth grade or below unless the student poses a serious risk of harm to the student or another person.

Added by Acts 2001, 77th Leg., ch. 212, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 6, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 691 (H.B. 359), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 691 (H.B. 359), Sec. 3, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 225 (H.B. 785), Sec. 2, eff. June 4, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1042 (S.B. 133), Sec. 1, eff. June 18, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1042 (S.B. 133), Sec. 2, eff. June 18, 2023.

Acts 2025, 89th Leg., R.S., Ch. 1065 (H.B. 2), Sec. 7.06, eff. September 1, 2025.

Sec. 37.0022. REMOVAL BY SCHOOL BUS DRIVER. (a) The driver of a school bus transporting students to or from school or a school-sponsored or school-related activity may send a student to the principal's office to maintain effective discipline on the school bus. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001.

(b) Section 37.004 applies to any placement under Subsection (a) of a student with a disability who receives special education services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 487 (S.B. 1541), Sec. 2, eff. June 14, 2013.

Sec. 37.0023. PROHIBITED AVERSIVE TECHNIQUES. (a) In this section, "aversive technique" means a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. The term includes a technique or intervention that:

(1) is designed to or likely to cause physical pain, other than an intervention or technique permitted under Section 37.0011;

(2) notwithstanding Section 37.0011, is designed to or likely to cause physical pain through the use of electric shock or any procedure that involves the use of pressure points or joint locks;

(3) involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student's face;

(4) denies adequate sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom facility;

(5) ridicules or demeans the student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse;

(6) employs a device, material, or object that simultaneously

immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;

(7) impairs the student's breathing, including any procedure that involves:

(A) applying pressure to the student's torso or neck; or

(B) obstructing the student's airway, including placing an object in, on, or over the student's mouth or nose or placing a bag, cover, or mask over the student's face;

(8) restricts the student's circulation;

(9) secures the student to a stationary object while the student is in a sitting or standing position;

(10) inhibits, reduces, or hinders the student's ability to communicate;

(11) involves the use of a chemical restraint;

(12) constitutes a use of timeout that precludes the student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals included in the student's individualized education program, including isolating the student by the use of physical barriers; or

(13) except as provided by Subsection (c), deprives the student of the use of one or more of the student's senses.

(b) A school district or school district employee or volunteer or an independent contractor of a school district may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied, to a student.

(c) Notwithstanding Subsection (a)(13), an aversive technique described by Subsection (a)(13) may be used if the technique is executed in a manner that:

(1) does not cause the student discomfort or pain; or

(2) complies with the student's individualized education program or behavior intervention plan.

(d) Nothing in this section may be construed to prohibit a teacher from removing a student from class under Section 37.002.

(e) In adopting procedures under this section, the commissioner shall provide guidance to school district employees, volunteers, and independent contractors of school districts in avoiding a violation of Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 598 (S.B. 712), Sec. 1, eff. June 10, 2019.

Added by Acts 2019, 86th Leg., R.S., Ch. 1180 (H.B. 3630), Sec. 1, eff. June

14, 2019.

Sec. 37.003. PLACEMENT REVIEW COMMITTEE. (a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:

(1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and

(2) the principal shall choose one member from the professional staff of a campus.

(b) The teacher refusing to readmit the student may not serve on the committee.

(c) The committee's placement determination regarding a student with a disability who receives special education services under Subchapter A, Chapter 29, is subject to the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and federal regulations, state statutes, and agency requirements necessary to carry out federal law or regulations or state law relating to special education.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 7, eff. June 20, 2003.

Sec. 37.004. PLACEMENT OF STUDENTS WITH DISABILITIES. (a) The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.

(b) Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:

(1) functional behavioral assessments;

(2) positive behavioral interventions, strategies, and supports;

(3) behavioral intervention plans; and

(4) the manifestation determination review.

(b-1) If a school district takes a disciplinary action regarding a student with a disability who receives special education services that

constitutes a change in placement under federal law, the district shall:

(1) not later than the 10th school day after the change in placement:

(A) seek consent from the student's parent or person standing in parental relation to the student to conduct a functional behavioral assessment of the student, if a functional behavioral assessment has never been conducted on the student or the student's most recent functional behavioral assessment is more than one year old; and

(B) review any previously conducted functional behavioral assessment of the student and any behavior improvement plan or behavioral intervention plan developed for the student based on that assessment; and

(2) as necessary:

(A) develop a behavior improvement plan or behavioral intervention plan for the student if the student does not have a plan; or

(B) if the student has a behavior improvement plan or behavioral intervention plan, revise the student's plan.

(c) A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes.

(d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 767, Sec. 6, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1225, Sec. 1, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 435, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 6.006, eff. Sept. 1, 2003.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 225 (H.B. 785), Sec. 3, eff. June 4, 2021.

Sec. 37.005. SUSPENSION. (a) The principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under Section 37.001 as conduct for which a student may be subject to an in-school or out-of-school suspension.

(b) An out-of-school suspension under this section may not exceed three school days. An in-school suspension under this section is not subject to any time limit.

(b-1) A school's principal or other appropriate administrator shall review the in-school suspension of a student under this section at least once

every 10 school days after the date the suspension begins to evaluate the educational progress of the student and to determine if continued in-school suspension is appropriate. If the principal or other appropriate administrator determines that continued in-school suspension is appropriate, the principal or other appropriate administrator shall document the determination.

(b-2) A school shall provide a student subject to an in-school suspension under this section with appropriate behavioral support services and comparable educational services as the student would receive in the classroom. If the student receives special education services under Subchapter A, Chapter 29, the student must:

(1) continue to receive special education and related services specified in the student's individualized education program; and

(2) continue to have an opportunity to progress in the general curriculum.

(c) A student who is enrolled in a grade level below grade three may not be placed in out-of-school suspension unless while on school property or while attending a school-sponsored or school-related activity on or off of school property, the student engages in:

(1) conduct that contains the elements of an offense related to weapons under Section 46.02 or 46.05, Penal Code;

(2) conduct that threatens the immediate health and safety of other students in the classroom;

(3) documented conduct that results in repeated or significant disruption to the classroom; or

(4) selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of:

(A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(B) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(C) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

(c-2) On receiving a written request from the student's parent or person standing in parental relation to the student, the principal or other appropriate administrator may at the principal's or other appropriate administrator's sole discretion reassign a student placed in out-of-school suspension under Subsection (c) to an in-school suspension if the student's parent or person standing in parental relation to the student demonstrates through supporting information and documentation that the parent or person is unable to provide suitable supervision for the student during school hours during the period of the suspension. The alternative placement provided by

this section may be used only in extenuating circumstances and may not be used as a routine replacement for out-of-school suspension. The school district shall maintain documentation of each reassignment under this subsection, including the parent's or person's request, the reason for the parent's or person's unavailability, and the supporting information and documentation.

(d) A school district or open-enrollment charter school may not place a student who is homeless in out-of-school suspension unless the student engages in conduct described by Subsections (c)(1)-(4) while on school property or while attending a school-sponsored or school-related activity on or off of school property. The campus behavior coordinator may coordinate with the school district's homeless education liaison to identify appropriate alternatives to out-of-school suspension for a student who is homeless. In this subsection, "student who is homeless" has the meaning assigned to the term "homeless children and youths" under 42 U.S.C. Section 11434a.

(e) A school district shall provide to a student during the period of the student's suspension under this section, regardless of whether the student is placed in in-school or out-of-school suspension, an alternative means of receiving all course work provided in the classes in the foundation curriculum under Section 28.002(a)(1) that the student misses as a result of the suspension. The district must provide at least one option for receiving the course work that does not require the use of the Internet.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 696 (H.B. 674), Sec. 2, eff. June 12, 2017.

Acts 2019, 86th Leg., R.S., Ch. 479 (H.B. 692), Sec. 1, eff. June 7, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1150 (H.B. 3012), Sec. 1, eff. June 14, 2019.

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 9, eff. June 20, 2025.

Sec. 37.0051. PLACEMENT OF STUDENTS COMMITTING SEXUAL ASSAULT AGAINST ANOTHER STUDENT. (a) As provided by Section 25.0341(b)(2), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 or a juvenile justice alternative education program under Section 37.011.

(b) A limitation imposed by this subchapter on the length of a placement in a disciplinary alternative education program or a juvenile justice alternative education program does not apply to a placement under

this section.

Added by Acts 2005, 79th Leg., Ch. 997 (H.B. 308), Sec. 2, eff. June 18, 2005.

Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) In this section:

(1) "Bullying" has the meaning assigned by Section 37.0832.

(2) "Intimate visual material" has the meaning assigned by Section 98B.001, Civil Practice and Remedies Code.

(b) A student may be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 or expelled if the student:

(1) engages in bullying that encourages a student to commit or attempt to commit suicide;

(2) incites violence against a student through group bullying; or

(3) releases or threatens to release intimate visual material of a minor or a student who is 18 years of age or older without the student's consent.

(c) Nothing in this section exempts a school from reporting a finding of intimate visual material of a minor.

Added by Acts 2017, 85th Leg., R.S., Ch. 522 (S.B. 179), Sec. 3, eff. September 1, 2017.

Sec. 37.006. REMOVAL FOR CERTAIN CONDUCT. (a) Subject to the requirements of Section 37.009(a), a student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or

(2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) except as provided by Section 37.007(a), engages in conduct punishable as a felony;

(B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;

(C) except as provided by Section 37.007(a)(3), sells, gives,

or delivers to another person or possesses or uses or is under the influence of:

(i) a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq., excluding marihuana, as defined by Section 481.002, Health and Safety Code, or tetrahydrocannabinol, as defined by rule adopted under Section 481.003 of that code; or

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(C-1) possesses, uses, or is under the influence of, or sells, gives, or delivers to another person marihuana, as defined by Section 481.002, Health and Safety Code, or tetrahydrocannabinol, as defined by rule adopted under Section 481.003 of that code;

(C-2) sells, gives, or delivers to another person an e-cigarette, as defined by Section 161.081, Health and Safety Code;

(D) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;

(E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code;

(F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code; or

(G) engages in conduct that contains the elements of the offense of harassment under Section 42.07(a)(1), (2), (3), or (7), Penal Code, against an employee of the school district.

(b) A student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct on or off of school property against any school employee or volunteer as defined by Section 22.053 that contains the elements of the offense of:

(1) retaliation under Section 36.06, Penal Code; or

(2) harassment under Section 42.07, Penal Code.

(c) In addition to Subsections (a) and (b), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as any of the following offenses under the Penal Code:

(A) a felony offense under Title 5;

(B) the offense of deadly conduct under Section 22.05;

(C) the felony offense of aggravated robbery under Section 29.03;

(D) the offense of disorderly conduct involving a firearm under Section 42.01(a)(7) or (8); or

(E) the offense of unlawfully carrying weapons under Section 46.02, except for an offense punishable as a Class C misdemeanor under that section;

(2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as an offense listed in Subdivision (1); or

(3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as an offense listed in Subdivision (1).

(d) In addition to Subsections (a), (b), and (c), a student may be removed from class and placed in a disciplinary alternative education program under Section 37.008:

(1) if the student:

(A) engages in conduct that contains the elements of the offense of disruptive activities under Section 37.123;

(B) subject to Subsection (d-1), engages in conduct that contains the elements of the offense of disruption of classes under Section 37.124, unless Subsection (d) of that section applies to the student; or

(C) possesses or uses an e-cigarette, as defined by Section 161.081, Health and Safety Code, except that if a student who possesses or uses an e-cigarette is not placed in a disciplinary alternative education program for the first-time offense under Section 37.008, the student shall be placed in in-school suspension for a period of at least 10 school days; or

(2) based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(A) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than aggravated robbery under Section 29.03, Penal Code, or those offenses defined in Title 5, Penal Code; and

(B) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

(d-1) A student may be removed from class under Subsection (d)(1)(B) for conduct described by Section 37.124(c)(1)(A) only if the conduct is

intentional and repeated.

(e) In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense by the Penal Code, the superintendent or the superintendent's designee may consider all available information, including the information furnished under Article 15.27, Code of Criminal Procedure, other than information requested under Article 15.27(k-1), Code of Criminal Procedure.

(f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in a disciplinary alternative education program with any other student who is not an elementary school student.

(g) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.

(h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the disciplinary alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the disciplinary alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

(i) The student or the student's parent or guardian may appeal the superintendent's decision under Subsection (h) to the board of trustees. The student may not be returned to the regular classroom pending the appeal. The board shall, at the next scheduled meeting, review the notice provided under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the superintendent or superintendent's designee and confirm or reverse the decision under Subsection (h). The board shall make a record of the proceedings. If the board confirms the decision of the superintendent or superintendent's designee, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner under Subsection (j).

(j) Notwithstanding Section 7.057(e), the decision of the board of trustees under Subsection (i) may be appealed to the commissioner as provided by Sections 7.057(b), (c), (d), and (f). The student may not be returned to the regular classroom pending the appeal.

(k) Subsections (h), (i), and (j) do not apply to placements made in accordance with Subsection (a).

(l) Notwithstanding any other provision of this code, other than Section 37.007(e)(2), a student who is younger than six years of age may not be removed from class and placed in a disciplinary alternative education program.

(m) Removal to a disciplinary alternative education program under Subsection (a) is not required if the student is expelled under Section 37.007 for the same conduct for which removal would be required.

(n) A principal or other appropriate administrator may but is not required to remove a student to a disciplinary alternative education program for off-campus conduct for which removal is required under this section if the principal or other appropriate administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

(o) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a principal or a principal's designee shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

(p) On the placement of a student in a disciplinary alternative education program under this section, the school district shall provide information to the student's parent or person standing in parental relation to the student regarding the process for requesting a full individual and initial evaluation of the student under Section 29.004.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 3, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 396, Sec. 2.15, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 486, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 1055, Sec. 9, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 504 (H.B. 603), Sec. 3, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 948 (H.B. 968), Sec. 1, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 451 (S.B. 2135), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 698 (S.B. 2432), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 542 (H.B. 3928), Sec. 4, eff. June 10, 2023.

Acts 2023, 88th Leg., R.S., Ch. 797 (H.B. 114), Sec. 1, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 10, eff. June 20, 2025.

Sec. 37.0061. FUNDING FOR ALTERNATIVE EDUCATION SERVICES IN JUVENILE RESIDENTIAL FACILITIES. A school district that provides education services to pre-adjudicated and post-adjudicated students who are confined by court order in a juvenile residential facility operated by a juvenile board is entitled to count such students in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. If the district has a local revenue level greater than the guaranteed local revenue level but less than the level established under Section 48.257, the district in which the student is enrolled on the date a court orders the student to be confined to a juvenile residential facility shall transfer to the district providing education services an amount equal to the difference between the average Foundation School Program costs per student of the district providing education services and the sum of the state aid and the money from the available school fund received by the district that is attributable to the student for the portion of the school year for which the district provides education services to the student.

Added by Acts 1997, 75th Leg., ch. 1015, Sec. 4, eff. June 19, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.041, eff. September 1, 2019.

Sec. 37.0062. INSTRUCTIONAL REQUIREMENTS FOR ALTERNATIVE EDUCATION SERVICES IN JUVENILE RESIDENTIAL FACILITIES. (a) The commissioner shall determine the instructional requirements for education services provided by a school district or open-enrollment charter school in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility operated by a juvenile board or a post-adjudication secure correctional facility operated under contract with the Texas Juvenile Justice Department, including requirements relating to:

(1) the length of the school day;

(2) the number of days of instruction provided to students each school year; and

(3) the curriculum of the educational program.

(b) The commissioner shall coordinate with the Texas Juvenile Justice Department in determining the instructional requirements for education services provided under Subsection (a):

(1) in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility operated by a juvenile board; and

(2) in a post-adjudication secure correctional facility operated under contract with the department.

(c) The commissioner shall adopt rules necessary to administer this section. The rules must ensure that:

(1) a student who receives education services in a pre-adjudication secure detention facility described by this section is offered courses that enable the student to maintain progress toward completing high school graduation requirements; and

(2) a student who receives education services in a post-adjudication secure correctional facility described by this section is offered, at a minimum, the courses necessary to enable the student to complete high school graduation requirements.

(d) The Texas Juvenile Justice Department shall coordinate with the commissioner in establishing standards for:

(1) ensuring security in the provision of education services in the facilities; and

(2) providing children in the custody of the facilities access to education services.

Added by Acts 2007, 80th Leg., R.S., Ch. 615 (H.B. 425), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 32, eff. September 1, 2015.

Sec. 37.007. EXPULSION FOR SERIOUS OFFENSES. (a) Except as provided by Subsection (k) and subject to the requirements of Section 37.009(a), a student shall be expelled from a school if the student, on or off of school property:

(1) engages in conduct that contains the elements of the offense of unlawfully carrying weapons under Section 46.02, Penal Code, or elements of an offense relating to prohibited weapons under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code;

(E) kidnapping under Section 20.03, Penal Code, or aggravated kidnapping under Section 20.04, Penal Code;

(F) burglary under Section 30.02, Penal Code, robbery under Section 29.02, Penal Code, or aggravated robbery under Section 29.03, Penal Code;

(G) manslaughter under Section 19.04, Penal Code;

(H) criminally negligent homicide under Section 19.05, Penal Code; or

(I) continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code;

(3) engages in conduct specified by Section 37.006(a)(2)(C), if the conduct is punishable as a felony;

(4) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code, against a school district employee or volunteer as defined by Section 22.053 of this code; or

(5) engages in conduct that contains the elements of the offense of exhibiting, using, or threatening to exhibit or use a firearm under Section 37.125 of this code.

(b) A student may be expelled if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code;

(2) while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) except as provided by Subsection (a)(3), sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

(i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code; or

(C) engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code;

(3) while within 300 feet of school property, as measured from any point on the school's real property boundary line, possesses a firearm, as defined by 18 U.S.C. Section 921; or

(4) engages in conduct that contains the elements of the offense of breach of computer security under Section 33.02, Penal Code, if:

(A) the conduct involves accessing a computer, computer network, or computer system owned by or operated on behalf of a school district; and

(B) the student knowingly:

(i) alters, damages, or deletes school district property or information; or

(ii) commits a breach of any other computer, computer network, or computer system.

(c) A student may be expelled if the student, while placed in a disciplinary alternative education program, engages in documented serious misbehavior while on the program campus despite documented behavioral interventions. For purposes of this subsection, "serious misbehavior" means:

(1) deliberate violent behavior that poses a direct threat to the health or safety of others;

(2) extortion, meaning the gaining of money or other property by force or threat;

(3) conduct that constitutes coercion, as defined by Section 1.07, Penal Code; or

(4) conduct that constitutes the offense of:

(A) public lewdness under Section 21.07, Penal Code;

(B) indecent exposure under Section 21.08, Penal Code;

(C) criminal mischief under Section 28.03, Penal Code;

(D) personal hazing under Section 37.152; or

(E) harassment under Section 42.07(a)(1), Penal Code, of a

student or district employee.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 21, eff. June 20, 2025.

(e) In accordance with 20 U.S.C. Section 7151, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:

(1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 7801, may modify the length of the expulsion in the case of an individual student;

(2) the district or other local educational agency shall provide educational services to an expelled student in a disciplinary alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and

(3) the district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a disciplinary alternative education program as provided in Section 37.008.

(f) A student who engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.

(g) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a school district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

(h) Subject to Subsection (e), notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.

(i) Repealed by Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 21, eff. June 20, 2025.

(k) A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs:

(1) at an approved target range facility that is not located on a school campus; and

(2) while participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department.

(l) Subsection (k) does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored shooting sports competition or a shooting sports educational activity described by that subsection.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 5, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 542, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 486, Sec. 2, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 225, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 443, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1055, Sec. 10, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 504 (H.B. 603), Sec. 4, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 5.004, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.26, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 338 (H.B. 1020), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 948 (H.B. 968), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 963 (H.B. 1224), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1267 (S.B. 107), Sec. 3, eff. June 20, 2015.

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.16, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 797 (H.B. 114), Sec. 2, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 11, eff. June 20, 2025.

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 21, eff. June 20, 2025.

Sec. 37.0071. VIRTUAL EDUCATION AS ALTERNATIVE TO EXPULSION. (a) Except as provided by Subsection (b), before a school district or open-enrollment charter school may expel a student, the district or school shall consider the appropriateness and feasibility of, as an alternative to expulsion, enrolling the student in a full-time hybrid program, full-time virtual program, full-time hybrid campus, or full-time virtual campus, as those terms are defined in Section 30B.001.

(b) Subsection (a) does not apply to a student expelled under Section 37.0081 or 37.007(a), (d), or (e).

Added by Acts 2025, 89th Leg., R.S., Ch. 5 (S.B. 569), Sec. 9, eff. May 6, 2025.

Sec. 37.008. DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS.

(a) Each school district shall provide a disciplinary alternative education program that:

(1) is provided in a setting other than a student's regular classroom;

(2) is located on or off of a regular school campus;

(3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;

(4) focuses on English language arts, mathematics, science, history, and self-discipline;

(5) provides for students' educational and behavioral needs;

(6) provides supervision and counseling; and

(7) employs only teachers who meet all certification requirements established under Subchapter B, Chapter 21.

(a-1) The agency shall adopt minimum standards for the operation of disciplinary alternative education programs, including standards relating to:

(1) student/teacher ratios;

(2) student health and safety;

(3) reporting of abuse, neglect, or exploitation of students;

(4) training for teachers in behavior management and safety procedures; and

(5) planning for a student's transition from a disciplinary alternative education program to a regular campus.

(b) A disciplinary alternative education program may provide for a

student's transfer to:

(1) a different campus;

(2) a school-community guidance center; or

(3) a community-based alternative school.

(c) An off-campus disciplinary alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39 or 39A.

(d) A school district may provide a disciplinary alternative education program jointly with one or more other districts.

(e) Each school district shall cooperate with government agencies and community organizations that provide services in the district to students placed in a disciplinary alternative education program.

(f) A student removed to a disciplinary alternative education program is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.

(g) A school district shall allocate to a disciplinary alternative education program the same expenditure per student attending the disciplinary alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program.

(h) A school district may not place a student, other than a student suspended as provided under Section 37.005 or expelled as provided under Section 37.007, in an unsupervised setting as a result of conduct for which a student may be placed in a disciplinary alternative education program.

(i) On request of a school district, a regional education service center may provide to the district information on developing a disciplinary alternative education program that takes into consideration the district's size, wealth, and existing facilities in determining the program best suited to the district.

(j) If a student placed in a disciplinary alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the

educator may share the information with the student's parent or guardian as provided for by state or federal law. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:

(1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or

(2) the student was placed in a disciplinary alternative education program by a school district in another state and:

(A) the out-of-state district provides to the district a copy of the placement order; and

(B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.

(j-1) If a student was placed in a disciplinary alternative education program by a school district in another state for a period that exceeds one year and a school district in this state in which the student enrolls continues the placement under Subsection (j), the district shall reduce the period of the placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

(k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs, e-cigarettes, or alcohol as specified under Section 37.006 or 37.007. A disciplinary alternative education program that provides chemical dependency treatment services must be licensed under Chapter 464, Health and Safety Code.

(l) A school district is required to provide in the district's disciplinary alternative education program a course necessary to fulfill a student's high school graduation requirements only as provided by this subsection. A school district shall offer a student removed to a disciplinary alternative education program an opportunity to complete coursework before the beginning of the next school year. The school district may provide the student an opportunity to complete coursework through any method available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this subsection.

(l-1) A school district shall provide the parents of a student removed

to a disciplinary alternative education program with written notice of the district's obligation under Subsection (l) to provide the student with an opportunity to complete coursework required for graduation. The notice must:

(1) include information regarding all methods available for completing the coursework; and

(2) state that the methods are available at no cost to the student.

(m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's disciplinary alternative education program established under this subchapter. The evaluation required by this section shall be based on indicators defined by the commissioner, but must include student performance on assessment instruments required under Sections 39.023(a) and (c). Academically, the mission of disciplinary alternative education programs shall be to enable students to perform at grade level.

(m-1) The commissioner shall develop a process for evaluating a school district disciplinary alternative education program electronically. The commissioner shall also develop a system and standards for review of the evaluation or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate disciplinary alternative education program data or of failing to comply with disciplinary alternative education program requirements. The commissioner shall notify the board of trustees of a district of any objection the commissioner has to the district's disciplinary alternative education program data or of a violation of a law or rule revealed by the data, including any violation of disciplinary alternative education program requirements, or of any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of disciplinary alternative education program data.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 6, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 396, Sec. 2.16, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1112, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 631, Sec. 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1055, Sec. 11, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 504 (H.B. 603), Sec. 5, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1171 (H.B. 426), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1316 (S.B. 49), Sec. 1, eff. June 17,

2011.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(19), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 851 (H.B. 2442), Sec. 7, eff. June 15, 2017.

Acts 2023, 88th Leg., R.S., Ch. 797 (H.B. 114), Sec. 3, eff. September 1, 2023.

Sec. 37.0081. EXPULSION AND PLACEMENT OF CERTAIN STUDENTS IN ALTERNATIVE SETTINGS. (a) Subject to Subsection (h), but notwithstanding any other provision of this subchapter, the board of trustees of a school district, or the board's designee, after an opportunity for a hearing may expel a student and elect to place the student in an alternative setting as provided by Subsection (a-1) if:

(1) the student:

(A) has received deferred prosecution under Section 53.03, Family Code, for conduct defined as:

(i) a felony offense in Title 5, Penal Code; or

(ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;

(B) has been found by a court or jury to have engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as:

(i) a felony offense in Title 5, Penal Code; or

(ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;

(C) is charged with engaging in conduct defined as:

(i) a felony offense in Title 5, Penal Code; or

(ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;

(D) has been referred to a juvenile court for allegedly engaging in delinquent conduct under Section 54.03, Family Code, for conduct defined as:

(i) a felony offense in Title 5, Penal Code; or

(ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;

(E) has received probation or deferred adjudication for a felony offense under Title 5, Penal Code, or the felony offense of aggravated robbery under Section 29.03, Penal Code;

(F) has been convicted of a felony offense under Title 5, Penal Code, or the felony offense of aggravated robbery under Section 29.03, Penal Code; or

(G) has been arrested for or charged with a felony offense under Title 5, Penal Code, or the felony offense of aggravated robbery under Section 29.03, Penal Code; and

(2) the board or the board's designee determines that the student's presence in the regular classroom:

(A) threatens the safety of other students or teachers;

(B) will be detrimental to the educational process; or

(C) is not in the best interests of the district's students.

(a-1) The student must be placed in:

(1) a juvenile justice alternative education program, if the school district is located in a county that operates a juvenile justice alternative education program or the school district contracts with the juvenile board of another county for the provision of a juvenile justice alternative education program; or

(2) a disciplinary alternative education program.

(b) Any decision of the board of trustees or the board's designee under this section is final and may not be appealed.

(c) The board of trustees or the board's designee may expel the student and order placement in accordance with this section regardless of:

(1) the date on which the student's conduct occurred;

(2) the location at which the conduct occurred;

(3) whether the conduct occurred while the student was enrolled in the district; or

(4) whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.

(d) Notwithstanding Section 37.009(c) or (d) or any other provision of this subchapter, a student expelled and ordered placed in an alternative setting by the board of trustees or the board's designee is subject to that placement until:

(1) the student graduates from high school;

(2) the charges described by Subsection (a)(1) are dismissed or reduced to a misdemeanor offense; or

(3) the student completes the term of the placement or is assigned to another program.

(e) A student placed in an alternative setting in accordance with this

section is entitled to the periodic review prescribed by Section 37.009(e).

(f) Subsection (d) continues to apply to the student if the student transfers to another school district in the state.

(g) The board of trustees shall reimburse a juvenile justice alternative education program in which a student is placed under this section for the actual cost incurred each day for the student while the student is enrolled in the program. For purposes of this subsection:

(1) the actual cost incurred each day for the student is determined by the juvenile board of the county operating the program; and

(2) the juvenile board shall determine the actual cost each day of the program based on the board's annual audit.

(h) To the extent of a conflict between this section and Section 37.007, Section 37.007 prevails.

Added by Acts 2003, 78th Leg., ch. 1055, Sec. 12, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1240 (H.B. 2532), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 948 (H.B. 968), Sec. 3, eff. June 17, 2011.

Sec. 37.0082. ASSESSMENT OF ACADEMIC GROWTH OF STUDENTS IN DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS. (a) To assess a student's academic growth during placement in a disciplinary alternative education program, a school district shall administer to a student placed in a program for a period of 90 school days or longer an assessment instrument approved by the commissioner for that purpose. The instrument shall be administered:

(1) initially on placement of the student in the program; and

(2) subsequently on the date of the student's departure from the program, or as near that date as possible.

(b) The assessment instrument required by this section:

(1) must be designed to assess at least a student's basic skills in reading and mathematics;

(2) may be:

(A) comparable to any assessment instrument generally administered to students placed in juvenile justice alternative education programs for a similar purpose; or

(B) based on an appropriate alternative assessment instrument developed by the agency to measure student academic growth; and

(3) is in addition to the assessment instruments required to be administered under Chapter 39.

(c) The commissioner shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1240 (H.B. 2532), Sec. 2, eff. June 15, 2007.

Sec. 37.0083. VIRTUAL EXPULSION PROGRAM. (a) The principal or other appropriate administrator may place a student who has been expelled under Section 37.007 or 37.0081 in a virtual expulsion program established by the district and provide virtual instruction and instructional materials for remote learning to the student only if:

(1) the school district is located in a county that operates a juvenile justice alternative education program or the school district contracts with the juvenile board of another county for the provision of a juvenile justice alternative education program, and the juvenile justice alternative education program rejects admission of the student or returns the student before the expiration of the discipline assignment; or

(2) the school district is not located in a county that operates a juvenile justice alternative education program and does not contract with the juvenile board of another county for the provision of a juvenile justice alternative education program.

(a-1) If the principal or other appropriate administrator places a student in a virtual expulsion program under this section, the school district shall ensure that the student has suitable computer equipment and Internet access and provide the computer equipment and Internet access if necessary.

(b) A school district must ensure that, to the extent practicable in a virtual setting, the district's virtual expulsion program complies with the requirements for a disciplinary alternative education program under Section 37.008.

(c) The principal or other appropriate administrator shall review the placement of a student in a virtual expulsion program under this section at least once every 45 school days after the date the placement begins to determine if continued placement in the program is appropriate. The review must consider whether a position for the grade level in which the student is enrolled has become available in an in-person setting under Subsection (a)(1). If the principal or other appropriate administrator determines that such a position has become available, the school district shall plan for the student's transition to an in-person setting as soon as practicable. If the principal or other appropriate administrator determines that continued placement is appropriate, the principal or other appropriate administrator shall document the determination.

(d) A student placed in a virtual expulsion program shall be counted toward the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program if the district can confirm the student's daily attendance in the virtual expulsion program.

(e) A school district may not require a teacher who provides virtual instruction to students in a virtual expulsion program to provide virtual instruction and in-class instruction for a course during the same class period.

(f) A teacher may not provide instruction for a virtual expulsion program course unless the teacher has completed a professional development course on virtual instruction.

(g) The commissioner shall adopt rules as necessary to implement this section, including rules providing for a method of taking attendance for students placed in a virtual expulsion program and rules requiring school districts to provide basic professional development training for teachers providing instruction in a virtual expulsion program.

Added by Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 12, eff. June 20, 2025.

Sec. 37.009. CONFERENCE; HEARING; REVIEW.

(a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the campus behavior coordinator or other appropriate administrator shall schedule a conference among the campus behavior coordinator or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the campus behavior coordinator, after consideration of the factors under Section 37.001(a)(4), shall order the placement of the student for a period consistent with the student code of conduct. Before ordering the suspension, expulsion, removal to a disciplinary alternative education program, or placement in a juvenile justice alternative education program of a student, the behavior coordinator must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action. If

school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the campus behavior coordinator or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that the student is a threat to the safety of other students or to district employees.

(a-1) If a disciplinary alternative education program is at capacity at the time a campus behavior coordinator is deciding placement under Subsection (a) for a student who engaged in conduct described under Section 37.006(a)(2)(C-1), (C-2), (D), or (E), the student shall be:

(1) placed in in-school suspension; and

(2) if a position becomes available in the program before the expiration of the period of the placement, transferred to the program for the remainder of the period.

(a-2) If a disciplinary alternative education program is at capacity at the time a campus behavior coordinator is deciding placement under Subsection (a) for a student who engaged in conduct described under Section 37.007 that constitutes violent conduct, as defined by commissioner rule, a student who has been placed in the program for conduct described under Section 37.006(a)(2)(C-1), (C-2), (D), or (E):

(1) may be removed from the program and placed in in-school suspension to make a position in the program available for the student who engaged in violent conduct; and

(2) if removed from the program under Subdivision (1) and a position in the program becomes available before the expiration of the period of the placement, shall be returned to the program for the remainder of the period.

(b) If a student's placement in a disciplinary alternative education program is to extend beyond 60 days or the end of the next grading period, whichever is earlier, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of the school district or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.

(c) Before it may place a student in a disciplinary alternative education program for a period that extends beyond the end of the school year, the board or the board's designee must determine that:

(1) the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the

student or to another individual; or

(2) the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.

(d) The board or the board's designee shall set a term for a student's placement in a disciplinary alternative education program. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

(e) A student placed in a disciplinary alternative education program shall be provided a review of the student's status, including a review of the student's academic status, by the board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required under this subsection to provide a course in the district's disciplinary alternative education program except as required by Section 37.008(l). At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent.

(f) Before a student may be expelled under Section 37.007, the board or the board's designee must provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. At the hearing, the student is entitled to be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not an employee of the school district. If the school district makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, the district may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends. Before ordering the expulsion of a student, the board of trustees must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the board concerns a mandatory or discretionary action. If the decision to expel a student is made by the board's designee,

the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a district court of the county in which the school district's central administrative office is located.

(f-1) The board or the board's designee may order the placement of a student expelled under Section 37.007 in an alternative education program as provided by Section 37.0083.

(g) The board or the board's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a disciplinary alternative education program under Section 37.001, 37.002, or 37.006 or expelling the student under Section 37.007.

(h) If the period of an expulsion is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of an expulsion may not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student. After a school district notifies the parents or guardians of a student that the student has been expelled, the parent or guardian shall provide adequate supervision of the student during the period of expulsion.

(i) If a student withdraws from the district before an order for placement in a disciplinary alternative education program or expulsion is entered under this section, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the district during the same or subsequent school year, the district may enforce the order at that time except for any period of the placement or expulsion that has been served by the student on enrollment in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order.

(j) If, during the term of a placement or expulsion ordered under this section, a student engages in additional conduct for which placement in a disciplinary alternative education program or expulsion is required or permitted, additional proceedings may be conducted under this section regarding that conduct and the principal or board, as appropriate, may enter an additional order as a result of those proceedings.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 7, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 13, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1267 (S.B. 107), Sec. 4, eff. June 20, 2015.

Acts 2023, 88th Leg., R.S., Ch. 797 (H.B. 114), Sec. 4, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 13, eff. June 20, 2025.

Sec. 37.0091. NOTICE TO NONCUSTODIAL PARENT. (a) A noncustodial parent may request in writing that a school district or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct under Section 37.006 or 37.007 that is generally provided by the district or school to a student's parent or guardian.

(b) A school district or school may not unreasonably deny a request authorized by Subsection (a).

(c) Notwithstanding any other provision of this section, a school district or school shall comply with any applicable court order of which the district or school has knowledge.

Added by Acts 2003, 78th Leg., ch. 1055, Sec. 14, eff. June 20, 2003.

Sec. 37.0095. ANTISEMITISM: DISCIPLINARY ACTION. In taking disciplinary action against a student for behavior that violates the student code of conduct adopted under Section 37.001 and that may reasonably be determined to have been motivated by antisemitism, a school district or open-enrollment charter school shall use the definition of antisemitism provided by Section 448.001, Government Code, including the examples referenced in that term, in determining whether the student's behavior was motivated by antisemitism.

Added by Acts 2025, 89th Leg., R.S., Ch. 84 (S.B. 326), Sec. 1, eff. May 20, 2025.

Sec. 37.010. COURT INVOLVEMENT. (a) Not later than the second business day after the date a hearing is held under Section 37.009, the board of trustees of a school district or the board's designee shall deliver a copy of the order placing a student in a disciplinary alternative education program under Section 37.006 or expelling a student under Section 37.007 and any information required under Section 52.04, Family Code, to the authorized officer of the juvenile court in the county in which the student resides. In a county that operates a program under Section 37.011, an expelled student shall to the extent provided by law or by the memorandum of understanding immediately attend the educational program from the date of expulsion, except that in a county with a population greater than 125,000, every expelled student who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program.

(b) If a student is expelled under Section 37.007(c), the board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Title 3, Family Code.

(c) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding with the district's board of trustees concerning the juvenile probation department's role in supervising and providing other support services for students in disciplinary alternative education programs, a court may not order a student expelled under Section 37.007 to attend a regular classroom, a regular campus, or a school district disciplinary alternative education program as a condition of probation.

(d) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding as described by Subsection (c), if a court orders a student to attend a disciplinary alternative education program as a condition of probation once during a school year and the student is referred to juvenile court again during that school year, the juvenile court may not order the student to attend a disciplinary alternative education program in a district without the district's consent until the student has successfully completed any sentencing requirements the court imposes.

(e) Any placement in a disciplinary alternative education program by a court under this section must prohibit the student from attending or participating in school-sponsored or school-related activities.

(f) If a student is expelled under Section 37.007, on the recommendation of the committee established under Section 37.003 or on its own initiative, a district may readmit the student while the student is completing any court disposition requirements the court imposes. After the student has successfully completed any court disposition requirements the court imposes, including conditions of a deferred prosecution ordered by the court, or such conditions required by the prosecutor or probation department, if the student meets the requirements for admission into the public schools established by this title, a district may not refuse to admit the student, but the district may place the student in the disciplinary alternative education program. Notwithstanding Section 37.002(d), the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

(g) If an expelled student enrolls in another school district, the board of trustees of the district that expelled the student shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the expulsion order and the referral to the authorized officer of the juvenile court. The district in which the student enrolls may continue the expulsion under the terms of the order, may place the student in a disciplinary alternative education program for the period specified by the expulsion order, or may allow the student to attend

regular classes without completing the period of expulsion. A district may take any action permitted by this subsection if the student was expelled by a school district in another state if:

(1) the out-of-state district provides to the district a copy of the expulsion order; and

(2) the grounds for the expulsion are also grounds for expulsion in the district in which the student is enrolling.

(g-1) If a student was expelled by a school district in another state for a period that exceeds one year and a school district in this state continues the expulsion or places the student in a disciplinary alternative education program under Subsection (g), the district shall reduce the period of the expulsion or placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

(h) A person is not liable in civil damages for a referral to juvenile court as required by this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 8, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 15, eff. June 20, 2003.

Sec. 37.011. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM. (a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Justice Department. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. For the purposes of this subchapter, only a disciplinary alternative education program operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:

(1) is not required to be approved by the department; and

(2) is not subject to Subsection (c), (d), (f), or (g).

(a-1) For purposes of this section and Section 37.010(a), a county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if:

(1) the county had a population of 125,000 or less according to the 2000 federal census; and

(2) the juvenile board of the county enters into, with the approval of the Texas Juvenile Justice Department, a memorandum of

understanding with each school district within the county that:

(A) outlines the responsibilities of the board and school districts in minimizing the number of students expelled without receiving alternative educational services; and

(B) includes the coordination procedures required by Section 37.013.

(a-2) For purposes of this section and Section 37.010(a), a county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if the county:

(1) has a population of 195,000 or less;

(2) is adjacent to two counties, each of which has a population of more than 1.7 million; and

(3) has seven or more school districts located wholly within the county's boundaries.

(a-3) For purposes of this section and Section 37.010(a), a county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if the county:

(1) has a population of more than 200,000 and less than 233,500;

(2) has five or more school districts located wholly within the county's boundaries; and

(3) has located in the county a juvenile justice alternative education program that, on May 1, 2011, served fewer than 15 students.

(a-4) A school district located in a county considered to be a county with a population of 125,000 or less under Subsection (a-3) shall provide educational services to a student who is expelled from school under this chapter. The district is entitled to count the student in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. An educational placement under this section may include:

(1) the district's disciplinary alternative education program; or

(2) a contracted placement with:

(A) another school district;

(B) an open-enrollment charter school;

(C) an institution of higher education;

(D) an adult literacy council; or

(E) a community organization that can provide an educational program that allows the student to complete the credits required for high school graduation.

(a-5) For purposes of Subsection (a-4), an educational placement other than a school district's disciplinary alternative education program is subject to the educational and certification requirements applicable to an open-enrollment charter school under Subchapter D, Chapter 12.

(b) If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school for conduct for which expulsion is required under Section 37.007(a) or (e), or for conduct that contains the elements of the offense of terroristic threat as described by Section 22.07(c-1), (d), or (e), Penal Code, the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:

(1) if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;

(2) if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;

(3) in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and

(4) provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.

(b-1) Subsection (b)(4) does not require that educational services be provided to a student who is not entitled to admission into the public schools of a school district under Section 25.001(b).

(c) A juvenile justice alternative education program shall adopt a student code of conduct in accordance with Section 37.001.

(d) A juvenile justice alternative education program must focus on English language arts, mathematics, science, social studies, and self-discipline. Each school district shall consider course credit earned by a student while in a juvenile justice alternative education program as credit earned in a district school. Each program shall administer assessment instruments under Subchapter B, Chapter 39, and shall offer a high school equivalency program. The juvenile board or the board's designee, with the parent or guardian of each student, shall regularly review the student's academic progress. In the case of a high school student, the board or the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and

shall establish a specific graduation plan for the student. The program is not required to provide a course necessary to fulfill a student's high school graduation requirements other than a course specified by this subsection.

(e) A juvenile justice alternative education program may be provided in a facility owned by a school district. A school district may provide personnel and services for a juvenile justice alternative education program under a contract with the juvenile board.

(f) A juvenile justice alternative education program must operate at least seven hours per day and 180 days per year, except that a program may apply to the Texas Juvenile Justice Department for a waiver of the 180-day requirement. The department may not grant a waiver to a program under this subsection for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a school district served by the program.

(g) A juvenile justice alternative education program shall be subject to a written operating policy developed by the local juvenile justice board and submitted to the Texas Juvenile Justice Department for review and comment. A juvenile justice alternative education program is not subject to a requirement imposed by this title, other than a reporting requirement or a requirement imposed by this chapter or by Chapter 39 or 39A.

(h) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapters 39 and 39A, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Justice Department, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapters 39 and 39A, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The department shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a student served by a juvenile justice alternative education program on the basis of an expulsion required under Section 37.007(a) or (e) is not eligible for Foundation School Program funding under Chapter 31 or 48 if the juvenile justice alternative education program receives funding from the department under this subchapter.

(i) A student transferred to a juvenile justice alternative education program must participate in the program for the full period ordered by the juvenile court unless the student's school district agrees to accept the student before the date ordered by the juvenile court. The juvenile court may not order a period of transfer under this section that exceeds the term of any probation ordered by the juvenile court.

(j) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's professional employees and volunteers are immune from liability to the same extent as a school district's professional employees and volunteers.

(k) Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:

(1) outlines the responsibilities of the juvenile board concerning the establishment and operation of a juvenile justice alternative education program under this section;

(2) defines the amount and conditions on payments from the school district to the juvenile board for students of the school district served in the juvenile justice alternative education program whose placement was not made on the basis of an expulsion required under Section 37.007(a) or (e);

(3) establishes that a student may be placed in the juvenile justice alternative education program if the student engages in serious misbehavior, as defined by Section 37.007(c);

(4) identifies and requires a timely placement and specifies a term of placement for expelled students for whom the school district has received a notice under Section 52.041(d), Family Code;

(5) establishes services for the transitioning of expelled students to the school district prior to the completion of the student's placement in the juvenile justice alternative education program;

(6) establishes a plan that provides transportation services for students placed in the juvenile justice alternative education program;

(7) establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting once the juvenile is no longer under juvenile court jurisdiction; and

(8) establishes a plan to address special education services required by law.

(l) The school district shall be responsible for providing an immediate educational program to students who engage in behavior resulting in expulsion under Section 37.007(b) and (f) but who are not eligible for admission into the juvenile justice alternative education program in accordance with the memorandum of understanding required under this section. The school district may provide the program or the school district may contract with a county juvenile board, a private provider, or one or more other school districts to provide the program. The memorandum of understanding shall address the circumstances under which such students who continue to engage in serious

misbehavior, as defined by Section 37.007(c), shall be admitted into the juvenile justice alternative education program.

(m) Each school district in a county with a population greater than 125,000 and the county juvenile board shall adopt a joint memorandum of understanding as required by this section not later than September 1 of each school year.

(n) If a student who is ordered to attend a juvenile justice alternative education program moves from one county to another, the juvenile court may request the juvenile justice alternative education program in the county to which the student moves to provide educational services to the student in accordance with the local memorandum of understanding between the school district and juvenile board in the receiving county.

(o) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's employees and volunteers are immune from liability to the same extent as a school district's employees and volunteers.

(p) If a district elects to contract with the juvenile board for placement in the juvenile justice alternative education program of students expelled under Section 37.007(b), (c), and (f) and the juvenile board and district are unable to reach an agreement in the memorandum of understanding, either party may request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator in which each party will pay its pro rata share of the arbitration costs. Each party must submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the school districts shall select an arbitrator, and those two arbitrators shall select an arbitrator who will decide the issues in dispute. An arbitration decision issued under this subsection is enforceable in a court in the county in which the juvenile justice alternative education program is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a juvenile justice alternative education program must provide an amount sufficient based on operation of the juvenile justice alternative education program in accordance with this chapter. In determining the amount to be paid by a school district for an expelled student enrolled in a juvenile justice alternative education program, the arbitrator shall consider the relevant factors, including evidence of:

(1) the actual average total per student expenditure in the district's alternative education setting;

(2) the expected per student cost in the juvenile justice alternative education program as described and agreed on in the memorandum of understanding and in compliance with this chapter; and

(3) the costs necessary to achieve the accountability goals under this chapter.

(q) In accordance with rules adopted by the board of trustees for the Teacher Retirement System of Texas, a certified educator employed by a juvenile board in a juvenile justice alternative education program shall be eligible for membership and participation in the system to the same extent that an employee of a public school district is eligible. The juvenile board shall make any contribution that otherwise would be the responsibility of the school district if the person were employed by the school district, and the state shall make any contribution to the same extent as if the person were employed by a school district.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 9, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 1282, Sec. 1, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 396, Sec. 2.17, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1225, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1055, Sec. 16, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 376 (H.B. 1425), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 235 (H.B. 592), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 948 (H.B. 968), Sec. 4, eff. June 17, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 70.01, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 33, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(20), eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.042, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1150 (H.B. 3012), Sec. 2, eff. June 14, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 19, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 14, eff. June 20, 2025.

Sec. 37.012. FUNDING OF JUVENILE JUSTICE ALTERNATIVE EDUCATION

PROGRAMS. (a) Subject to Section 37.011(n), the school district in which a student is enrolled on the date the student is expelled for conduct for which expulsion is permitted but not required under Section 37.007 shall, if the student is served by the juvenile justice alternative education program, provide funding to the juvenile board for the portion of the school year for which the juvenile justice alternative education program provides educational services in an amount determined by the memorandum of understanding under Section 37.011(k)(2).

(b) Funds received under this section must be expended on juvenile justice alternative education programs.

(c) The Office of State-Federal Relations shall assist a local juvenile probation department in identifying additional state or federal funds to assist local juvenile probation departments conducting educational or job training programs within juvenile justice alternative education programs.

(d) A school district is not required to provide funding to a juvenile board for a student who is assigned by a court to a juvenile justice alternative education program but who has not been expelled.

(e) Except as otherwise authorized by law, a juvenile justice alternative education program may not require a student or the parent or guardian of a student to pay any fee, including an entrance fee or supply fee, for participating in the program.

(f) Notwithstanding any other law, for purposes of any budget reductions requested by the Legislative Budget Board or the governor, any money received by a local juvenile probation department or appropriated to the Texas Juvenile Justice Department for purposes of operating a juvenile justice alternative education program is considered to be part of the foundation school program and is not subject to those budget reductions.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 10, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 17, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 964 (H.B. 1687), Sec. 1, eff. June 18, 2005.

Acts 2021, 87th Leg., R.S., Ch. 489 (H.B. 3456), Sec. 5, eff. June 14, 2021.

Sec. 37.013. COORDINATION BETWEEN SCHOOL DISTRICTS AND JUVENILE BOARDS. The board of trustees of the school district or the board's designee shall at the call of the president of the board of trustees regularly meet with the juvenile board for the county in which the district's central administrative office is located or the juvenile board's designee concerning supervision and rehabilitative services appropriate for expelled students and students assigned to disciplinary alternative education programs. Matters for

discussion shall include service by probation officers at the disciplinary alternative education program site, recruitment of volunteers to serve as mentors and provide tutoring services, and coordination with other social service agencies.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 18, eff. June 20, 2003.

Sec. 37.014. COURT-RELATED CHILDREN--LIAISON OFFICERS. Each school district shall appoint at least one educator to act as liaison officer for court-related children who are enrolled in the district. The liaison officer shall provide counselling and services for each court-related child and the child's parents to establish or reestablish normal attendance and progress of the child in the school.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 37.015. REPORTS TO LOCAL LAW ENFORCEMENT; LIABILITY. (a) The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:

(1) conduct that may constitute an offense listed under Section 508.149, Government Code;

(2) deadly conduct under Section 22.05, Penal Code;

(3) a terroristic threat under Section 22.07, Penal Code;

(4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;

(5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code;

(6) conduct that may constitute a criminal offense under Section 71.02, Penal Code; or

(7) conduct that may constitute a criminal offense for which a student may be expelled under Section 37.007(a) or (e).

(b) A person who makes a notification under this section shall include the name and address of each student the person believes may have participated in the activity.

(c) A notification is not required under Subsection (a) if the person reasonably believes that the activity does not constitute a criminal offense.

(d) The principal of a public or private primary or secondary school may designate a school employee who is under the supervision of the principal to make the reports required by this section.

(e) The person who makes the notification required under Subsection (a) shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.

(f) A person is not liable in civil damages for reporting in good faith as required by this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 12.05, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 19, eff. June 20, 2003.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 15, eff. June 20, 2025.

Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY. (a) The principal of a public primary or secondary school, or a person designated by the principal under Subsection (c), may make a report to any school district police department, if applicable, or the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if, after an investigation is completed, the principal has reasonable grounds to believe that a student engaged in conduct that constitutes an offense under Section 22.01 or 42.07(a)(7), Penal Code.

(b) A person who makes a report under this section may include the name and address of each student the person believes may have participated in the conduct.

(c) The principal of a public primary or secondary school may designate a school employee, other than a school counselor, who is under the supervision of the principal to make the report under this section.

(d) A person who is not a school employee but is employed by an entity that contracts with a district or school to use school property is not required to make a report under this section and may not be designated by the principal of a public primary or secondary school to make a report. A person who voluntarily makes a report under this section is immune from civil or criminal liability.

(e) A person who takes any action under this section is immune from civil or criminal liability or disciplinary action resulting from that

action.

(f) Notwithstanding any other law, this section does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act under this section.

(g) A school district and school personnel and school volunteers are immune from suit resulting from an act under this section, including an act under related policies and procedures.

(h) An act by school personnel or a school volunteer under this section, including an act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the school district or the district's employees.

Added by Acts 2017, 85th Leg., R.S., Ch. 522 (S.B. 179), Sec. 4, eff. September 1, 2017.

Sec. 37.016. REPORT OF DRUG OFFENSES; LIABILITY. A teacher, school administrator, or school employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property:

(1) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code;

(2) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(3) an abusable glue or aerosol paint, as defined by Chapter 485, Health and Safety Code, or a volatile chemical, as listed in Chapter 484, Health and Safety Code, if the substance is used or sold for the purpose of inhaling its fumes or vapors; or

(4) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 37.017. DESTRUCTION OF CERTAIN RECORDS. Information received by a school district under Article 15.27, Code of Criminal Procedure, may not be attached to the permanent academic file of the student who is the subject of the report. The school district shall destroy the information at the end of the school year in which the report was filed.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 37.018. INFORMATION FOR EDUCATORS. Each school district shall provide each teacher and administrator with a copy of this subchapter and with a copy of the local policy relating to this subchapter.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 37.0181. PROFESSIONAL DEVELOPMENT REGARDING DISCIPLINARY PROCEDURES. (a) Each principal or other appropriate administrator who oversees student discipline shall, at least once every three school years, attend professional development training regarding this subchapter, including training relating to the distinction between a discipline management technique used at the principal's discretion under Section 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Section 37.002(b).

(b) Professional development training under this section may be provided in coordination with regional education service centers through the use of distance learning methods, such as telecommunications networks, and using available agency resources.

Added by Acts 2013, 83rd Leg., R.S., Ch. 329 (H.B. 1952), Sec. 1, eff. June 14, 2013.

Sec. 37.019. EMERGENCY PLACEMENT OR EXPULSION. (a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary alternative education program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.

(b) This subchapter does not prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property from imminent harm.

(b-1) The principal or principal's designee may order the emergency placement or expulsion of a student under this section based on a single incident of behavior by the student.

(c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a disciplinary alternative education program or expulsion may be made on a nonemergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student shall be accorded

the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply under this subchapter to a student without a disability.

(d) A principal or principal's designee is not liable in civil damages for an emergency placement under this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 767, Sec. 7, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 1055, Sec. 20, eff. June 20, 2003.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 16, eff. June 20, 2025.

Sec. 37.020. REPORTS RELATING TO OUT-OF-SCHOOL SUSPENSIONS, EXPULSIONS, AND DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM PLACEMENTS. (a) In the manner required by the commissioner, each school district shall annually report to the commissioner the information required by this section.

(b) For each placement in a disciplinary alternative education program established under Section 37.008, the district shall report:

(1) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2) information indicating whether the placement was based on:

(A) conduct violating the student code of conduct adopted under Section 37.001;

(B) conduct for which a student may be removed from class under Section 37.002(b);

(C) conduct for which placement in a disciplinary alternative education program is required by Section 37.006; or

(D) conduct occurring while a student was enrolled in another district and for which placement in a disciplinary alternative education program is permitted by Section 37.008(j);

(3) the number of full or partial days the student was assigned to the program and the number of full or partial days the student attended the program; and

(4) the number of placements that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5).

(c) For each expulsion under Section 37.007, the district shall report:

(1) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2) information indicating whether the expulsion was based on:

(A) conduct for which expulsion is required under Section 37.007, including information specifically indicating whether a student was expelled on the basis of Section 37.007(e); or

(B) conduct for which expulsion is permitted under Section 37.007;

(3) the number of full or partial days the student was expelled;

(4) information indicating whether:

(A) the student was placed in a juvenile justice alternative education program under Section 37.011;

(B) the student was placed in a disciplinary alternative education program; or

(C) the student was not placed in a juvenile justice or other disciplinary alternative education program; and

(5) the number of expulsions that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5).

(d) Expired.

(e) Expired.

(f) For each out-of-school suspension under Section 37.005, the district shall report:

(1) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2) information indicating the basis for the suspension;

(3) the number of full or partial days the student was suspended; and

(4) the number of out-of-school suspensions that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(3).

Added by Acts 1997, 75th Leg., ch. 1015, Sec. 11, eff. June 19, 1997. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 21, eff. June 20, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 691 (H.B. 156), Sec. 2, eff. June 12,

2017.

Acts 2019, 86th Leg., R.S., Ch. 1229 (H.B. 65), Sec. 1, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1229 (H.B. 65), Sec. 2, eff. June 14, 2019.

Sec. 37.021. OPPORTUNITY TO COMPLETE COURSES DURING IN-SCHOOL AND CERTAIN OTHER PLACEMENTS. (a) If a school district removes a student from the regular classroom and places the student in in-school suspension or another setting other than a disciplinary alternative education program, the district shall offer the student the opportunity to complete before the beginning of the next school year each course in which the student was enrolled at the time of the removal.

(b) The district may provide the opportunity to complete courses by any method available, including a correspondence course, distance learning, or summer school.

Added by Acts 2003, 78th Leg., ch. 1055, Sec. 22, eff. June 20, 2003.

Sec. 37.022. NOTICE OF DISCIPLINARY ACTION. (a) In this section:

(1) "Disciplinary action" means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a district or school.

(2) "District or school" includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.

(b) If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.

(c) Subject to Section 37.007(e), the district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action.

Added by Acts 2003, 78th Leg., ch. 631, Sec. 1, eff. June 20, 2003.

Renumbered from Education Code, Section 37.021 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(16), eff. September 1, 2005.

Sec. 37.023. TRANSITION FROM ALTERNATIVE EDUCATION PROGRAM TO REGULAR CLASSROOM. (a) In this section:

(1) "Alternative education program" includes:

(A) a disciplinary alternative education program operated by a school district or open-enrollment charter school;

(B) a juvenile justice alternative education program; and

(C) a residential program or facility operated by or under contract with the Texas Juvenile Justice Department, a juvenile board, or any other governmental entity.

(2) "Licensed clinical social worker" has the meaning assigned by Section 505.002, Occupations Code.

(b) As soon as practicable after an alternative education program determines the date of a student's release from the program, the alternative education program administrator shall:

(1) provide written notice of that date to:

(A) the student's parent or a person standing in parental relation to the student; and

(B) the administrator of the campus to which the student intends to transition; and

(2) provide the campus administrator:

(A) an assessment of the student's academic growth while attending the alternative education program; and

(B) the results of any assessment instruments administered to the student.

(c) Not later than five instructional days after the date of a student's release from an alternative education program, the campus administrator shall coordinate the student's transition to a regular classroom. The coordination must include assistance and recommendations from:

(1) school counselors;

(2) school district peace officers;

(3) school resource officers;

(4) licensed clinical social workers;

(5) campus behavior coordinators;

(6) classroom teachers who are or may be responsible for implementing the student's personalized transition plan developed under Subsection (d); and

(7) any other appropriate school district personnel.

(d) The assistance required by Subsection (c) must include a personalized transition plan for the student developed by the campus administrator. A personalized transition plan:

(1) must include:

(A) recommendations for the best educational placement of the student; and

(B) the provision of information to the student's parent or a person standing in parental relation to the student regarding the process to request a full individual and initial evaluation of the student for purposes of special education services under Section 29.004; and

(2) may include:

(A) recommendations for counseling, behavioral management, or academic assistance for the student with a concentration on the student's academic or career goals;

(B) recommendations for assistance for obtaining access to mental health services provided by the district or school, a local mental health authority, or another private or public entity; and

(C) a regular review of the student's progress toward the student's academic or career goals.

(e) If practicable, the campus administrator, or the administrator's designee, shall meet with the student's parent or a person standing in parental relation to the student to coordinate plans for the student's transition.

(f) This section applies only to a student subject to compulsory attendance requirements under Section 25.085.

Added by Acts 2019, 86th Leg., R.S., Ch. 803 (H.B. 2184), Sec. 1, eff. June 10, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 542 (H.B. 3928), Sec. 5, eff. June 10, 2023.

Planning and Decision-Making Process

A board shall adopt a policy to establish a district- and campus-level planning and decision-making process that will involve the professional staff of a district, parents of students enrolled in a district, business representatives, and community members in establishing and reviewing the district's and campuses' educational plans, goals, performance objectives, and major classroom instructional programs. *Education Code 11.251(b)*

The planning and decision-making requirements do not:

1. Prohibit a board from conducting meetings with teachers or groups of teachers other than the district-level committee meetings.
2. Prohibit a board from establishing policies providing avenues for input from others, including students or paraprofessional staff, in district- or campus-level planning and decision making.
3. Limit or affect the power of a board to govern the public schools.
4. Create a new cause of action or require collective bargaining.

Education Code 11.251(g)

Evaluation

At least every two years, a district shall evaluate the effectiveness of the district's decision-making and planning policies, procedures, and staff development activities related to district- and campus-level decision making and planning to ensure that they are effectively structured to positively impact student performance. *Education Code 11.252(d)*

Administrative Procedure

A board shall ensure that an administrative procedure is provided to clearly define the respective roles and responsibilities of the superintendent, central office staff, principals, teachers, district-level committee members, and campus-level committee members in the areas of planning, budgeting, curriculum, staffing patterns, staff development, and school organization.

A board shall ensure that the district-level planning and decision-making committee will be actively involved in establishing the administrative procedure that defines the respective roles and responsibilities pertaining to planning and decision making at the district and campus levels.

Education Code 11.251(d)

Federal Requirements

The district policy must provide that all pertinent federal planning requirements are addressed through the district- and campus-level planning process. *Education Code 11.251(f)*

Required Plans

A board shall ensure that a district improvement plan and improvement plans for each campus are developed, reviewed, and revised annually for the purpose of improving the performance of all students. A board shall annually approve district and campus performance objectives and shall ensure that the district and campus plans:

1. Are mutually supportive to accomplish the identified objectives; and
2. At a minimum, support the state goals and objectives under Education Code Chapter 4.

Education Code 11.251(a)

Shared Services Arrangement for DAEP Services

Each district participating in a shared services arrangement for disciplinary alternative education program (DAEP) services shall be responsible for ensuring that the board-approved district improvement plan and the improvement plans for each campus include the performance of the DAEP student group for the respective district. The identified objectives for the improvement plans shall include:

1. Student groups served, including overrepresentation of students from economically disadvantaged families, with ethnic and racial representations, with a disability who receive special education services, or receiving limited English proficiency/English learner services;
2. Attendance rates;
3. Pre- and post-assessment results;
4. Dropout rates;
5. Graduation rates; and
6. Recidivism rates.

19 TAC 103.1201(b) [See FOCA]

District Improvement Plan

A district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee. The purpose of the district improvement plan is to guide district and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the achievement indicators. *Education Code 11.252(a)* [See AIA]

Availability to TEA

A district's plan for the improvement of student performance is not filed with the Texas Education Agency (TEA), but the district must

make the plan available to TEA on request. *Education Code 11.252(b)*

Required Provisions

The district improvement plan must include provisions for:

1. A comprehensive needs assessment addressing performance on the achievement indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by a district, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Education Code Chapter 29, Subchapter A.

2. Measurable district performance objectives for all appropriate achievement indicators for all student populations, including students in special education programs under Education Code Chapter 29, Subchapter A, and other measures of student performance that may be identified through the comprehensive needs assessment.

3. Strategies for improvement of student performance that include:

    a. Instructional methods for addressing the needs of student groups not achieving their full potential.

    b. Evidence-based practices that address the needs of students for special programs, including:

        (1) Suicide prevention programs, in accordance with Education Code Chapter 38, Subchapter G, which include a parental or guardian notification procedure [see FFEB];

        (2) Conflict resolution programs;

        (3) Violence prevention programs; and

        (4) Dyslexia treatment programs.

    c. Dropout reduction.

    d. Integration of technology in instructional and administrative programs.

    e. Positive behavior interventions and support, including interventions and support that integrate best practices on grief-informed and trauma-informed care.

    f. Staff development for professional staff of a district.

g. Career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities.

h. Accelerated education.

i. Implementation of a comprehensive school counseling program under Education Code 33.005. [See FFEA]

4. Strategies for providing to elementary school, middle school, junior high school, and high school students, those students' teachers and school counselors, and those students' parents information about:

a. Higher education admissions and financial aid opportunities, including state financial aid opportunities such as the TEXAS grant program and the Teach for Texas grant program.

b. The need for students to make informed curriculum choices to be prepared for success beyond high school.

c. Sources of information on higher education admissions and financial aid.

5. Resources needed to implement identified strategies.

6. Staff responsible for ensuring the accomplishment of each strategy.

7. Timelines for ongoing monitoring of the implementation of each improvement strategy.

8. Formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance.

9. The policy under Education Code 38.0041 addressing sexual abuse and other maltreatment of children. [See FFG]

10. The trauma-informed care policy required under Education Code 38.036. [See FFBA]

Education Code 11.252(a)

Law Enforcement Duties

The law enforcement duties of peace officers, school resource officers, and security personnel must be included in the district improvement plan. *Education Code 37.081(d)(1)* [See CKE]

Discipline Management

A district shall adopt and implement a discipline management program to be included in the district improvement plan. *Education Code 37.083(a)* [See FNC]

Dating Violence	A district shall adopt and implement a dating violence policy to be included in the district improvement plan. *Education Code 37.0831* [See FFH]
Bullying Prevention	The policy and any necessary procedures adopted under Education Code 37.083(c) (concerning bullying) must be included in the district improvement plan. *Education Code 37.0832(d)(2)* [See FFI]
Mental Health, Substance Abuse, and Suicide	The practices and procedures developed under Education Code 38.351(i) or (i-1) (mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention) must be included in the district improvement plan. *Education Code 38.351(k)(2)* [See FFEB]

Campus-Level Plan

Each school year, the principal of each school campus, with the assistance of the campus-level committee, shall develop, review, and revise the campus improvement plan for the purpose of improving student performance for all student populations, including students in special education programs under Education Code Chapter 29, Subchapter A, with respect to the student achievement indicators and any other appropriate performance measures for special needs populations. *Education Code 11.253(c)*

Each campus improvement plan must:

1. Assess the academic achievement for each student in the school using the achievement indicator system.
2. Set the campus performance objectives based on the achievement indicator system, including objectives for special needs populations, including students in special education programs under Education Code Chapter 29, Subchapter A.
3. Identify how the campus goals will be met for each student.
4. Determine the resources needed to implement the plan.
5. Identify staff needed to implement the plan.
6. Set timelines for reaching the goals.
7. Measure progress toward the performance objectives periodically to ensure that the plan is resulting in academic improvement.
8. Include goals and methods for violence prevention and intervention on campus.
9. Provide for a program to encourage parental involvement at the campus.

10. If the campus is an elementary, middle, or junior high school, set goals and objectives for the coordinated health program at the campus based on:

    a. Student fitness assessment data, including any data from research-based assessments such as the school health index assessment and planning tool created by the federal Centers for Disease Control and Prevention;

    b. Student academic performance data;

    c. Student attendance rates;

    d. The percentage of students who are educationally disadvantaged;

    e. The use and success of any method to ensure that students participate in moderate to vigorous physical activity; and

    f. Any other indicator recommended by the local school health advisory council.

Education Code 11.253(d)

Table of Contents

Section I: General Provisions....2
Section II: Fraud and Financial Impropriety....3
Definition....3
Financial Controls and Oversight....4
Fraud Prevention....4
Reports....4
Protection from Retaliation....4
Investigations....5
Response....5
Federal Awards Disclosure....5
Analysis of Fraud....5
Section III: Ethics and Compliance Program and E-Rate Compliance....6
Definitions....6
E-Rate....6
E-Rate Personnel....6
E-Rate Vendor / Service Provider....6
Gifts and Conflicts of Interest....7
Campaign Receipts and Business Relationships....7
Monitoring Campaign Receipts....8
Monitoring Business Relationships....8
Disclosure of Interest....9
Monitoring and Compliance Review....9
Education / Training....9
Compliance Officer....10
Section IV: Standard Bidding and Contracting....11
Code of Silence....11
Vendor Relationships — Conflicts of Interest....11
Procurement Methods....11
Applicability....12
Exception....12
Time Period....12
Violation....14
Formal Complaints....14

Section I: General Provisions

All Trustees, employees, vendors, contractors, agents, consultants, volunteers, and any other parties who are involved in the District's financial transactions shall act with integrity and diligence in duties involving the District's fiscal resources.

Note: See the following policies and/or administrative regulations regarding conflicts of interest, ethics, and financial oversight:

- Code of ethics:
  - for Board members — BBF
  - for employees — DH
- Financial conflicts of interest:
  - for public officials — BBFA
  - for all employees — DBD
  - for vendors — CHE
- Compliance with state and federal grant and award requirements: CB, CBB
- Financial conflicts and gifts and gratuities regarding federal funds: CB, CBB
- Systems for monitoring the District's investment program: CDA
- Budget planning and evaluation: CE
- Compliance with accounting regulations: CFC
- Activity fund management: CFD
- Criminal history record information for employees: DBAA, DC
- Disciplinary action for fraud by employees: DCD, DCE, and DF series

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Section II: Fraud and Financial Impropriety

The District prohibits fraud and financial impropriety, as defined below, in the actions of its Trustees, employees, vendors, contractors, agents, consultants, volunteers, and any other individuals or entities seeking or maintaining a business relationship with the District.

Definition

Fraud is defined as a knowing or intentional misrepresentation or knowing or intentional concealment or omission of a material fact made to induce another to act to their detriment.

Fraud and financial impropriety shall include, but not be limited to:

1. Forgery or unauthorized alteration of any document or account belonging to the District.
2. Forgery or unauthorized alteration of a check, bank draft, or any other financial document.
3. Misappropriation of funds, securities, supplies, or other District assets, including employee time.
4. Impropriety in the handling of money or reporting of District financial transactions.
5. Profiteering as a result of insider knowledge of District information or activities.
6. Unauthorized disclosure of confidential or proprietary information to outside parties.
7. Unauthorized disclosure of investment activities engaged in or contemplated by the District.
8. Accepting or seeking anything of material value from contractors, vendors, or other persons providing services or materials to the District, except as otherwise permitted by law or District policy. [See CB, DBD]
9. Inappropriately destroying, removing, or using District property, including but not limited to records, furniture, fixtures, or equipment, except as authorized by District policy.
10. Failure to provide financial records required by state or local entities.
11. Failure to disclose conflicts of interest as required by law or District policy.
12. Submission of any document or record known to be false or altered with the intent of having it accepted as a genuine record.

13. Intentionally destroying, concealing, removing, or otherwise impairing the verity, legibility, or availability of documents or records.

14. Any other dishonest or fraudulent act regarding the finances of the District.

15. Failure to comply with requirements imposed by law, the awarding agency, or a pass-through entity for state and federal awards.

Financial Controls and Oversight

Each employee who supervises or prepares District financial reports or transactions shall set an example of honest and ethical behavior and shall actively monitor their area of responsibility for fraud and financial impropriety.

Fraud Prevention

The Superintendent or designee shall maintain a system of internal controls to deter and monitor for fraud or financial impropriety in the District. [See BJA(LOCAL)]

Reports

Any employee who knows or suspects fraud or financial impropriety in the District or who witnesses a District-related crime may report the fraud, financial impropriety, or crime to any of the following:

1. Any peace officer with authority to investigate the crime;

2. External audit;

3. Any supervisor;

4. The Office of Ethics and Compliance;

5. The District’s 24-hour Ethics Hotline;

6. The general counsel’s office;

7. The Superintendent or designee; or

8. Any person with authority to investigate the suspicions.

Reports of suspected fraud or financial impropriety shall be treated as confidential to the extent permitted by law. Limited disclosure may be necessary to complete a full investigation or to comply with law. All employees involved in an investigation shall be advised to keep information about the investigation confidential with the exception that any employee represented by a lawyer or other designated representative for purposes of the investigation may share information with their lawyer or designated representative.

Protection from Retaliation	Neither the Board nor any District employee shall unlawfully retaliate against a person who in good faith reports perceived fraud, financial impropriety, or crime. [See DG]
Investigations	Prior to assignment, staff from the Houston Independent School District (HISD) Office of Legal Services, Office of Finance and Operations, and Office of the Chief of Police shall meet to determine the appropriate investigative unit. Such recommendation will be made to the Superintendent for assignment. Each investigative unit shall conduct and/or coordinate all investigations assigned to it. The investigative unit shall coordinate with the Office of Legal Services.
Response	If an investigation substantiates a report of fraud or financial impropriety, the Superintendent or designee shall promptly inform the Board of the report, the investigation, and any responsive action taken or recommended by the administration. If an employee is found to have committed fraud or financial impropriety, the Superintendent or designee shall take or recommend appropriate disciplinary action, which may include termination of employment. If a contractor, vendor, consultant, volunteer, or other party involved in the District's financial transactions is found to have committed fraud or financial impropriety, the District shall take appropriate action, which may include cancellation of the District's relationship with that party. When circumstances warrant, the Board, Superintendent, or designee may refer matters to appropriate law enforcement or regulatory authorities. In cases involving monetary loss to the District, the District may seek to recover lost or misappropriated funds. The final disposition of the matter and any decision to file a criminal complaint or to refer the matter to the appropriate law enforcement or regulatory agency for independent investigation shall be made in consultation with legal counsel.
Federal Awards Disclosure	In connection with federal awards, the District shall promptly disclose in writing whenever the District has credible evidence of the commission of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in federal law, including the Civil False Claims Act. This provision applies to any activities or subawards of a federal award. [See the CBB series]
Analysis of Fraud	After an investigation substantiates a report of fraud or financial impropriety, the Superintendent or designee shall analyze

conditions or factors that may have contributed to the fraudulent or improper activity. The Superintendent or designee shall ensure that appropriate administrative procedures are developed and implemented to prevent future misconduct. These measures shall be presented to the Board for review.

Section III: Ethics and Compliance Program and E-Rate Compliance

The Superintendent or designee shall establish a system of internal controls that ensures high-level management oversight and appropriate review of all District Ethics and Compliance activities and E-Rate program activities.

Definitions

E-Rate

E-Rate is the commonly used name for the Schools and Libraries Program of the Universal Service Fund. The E-Rate program is administered by the Universal Service Administrative Company (USAC) under the direction of the Federal Communications Commission (FCC). The E-Rate program provides discounts to assist schools and libraries to obtain affordable internet access, telecommunications, internal connections, and related equipment.

E-Rate Personnel

E-Rate personnel includes:

- All District officers, Board members, and employees involved in any aspect of the E-Rate program.
- Contractors (except for service providers that provide E-Rate-supported services to the District), consultants, agents, and other entities and individuals involved on behalf of the District with the E-Rate program, including individuals who:
    - Prepare, review, approve, sign, or submit E-Rate applications or other forms related to the E-Rate program; or
    - Determine whether services are eligible for funding, prepare bids, or communicate or work with E-Rate service providers, E-Rate consultants, or USAC.
- Office of Ethics and Compliance staff members responsible for monitoring the District's compliance with E-Rate program rules.

E-Rate Vendor / Service Provider

An E-Rate vendor/service provider is defined as any external entity or individual, and any affiliates, involved in any aspect of the District's E-Rate program, including, but not limited to:

- Parent companies;
- Subsidiary companies;
- Joint ventures;
- Resellers;

- Consultants/contractors of the above entities;
- Board members/officers/owners of the above entities; and
- Employees/representatives/salespersons of the above entities.

Gifts and Conflicts of Interest

The appearance of a conflict of interest is just as important as a real conflict. If an outside independent party might question the intent of a transaction or relationship, such transaction or relationship is deemed to create the appearance of a conflict and therefore should be avoided.

E-Rate program personnel are prohibited from accepting gifts, meals, entertainment, or anything of value from any outside entity, or any consultant or other individual representing such an entity that provides or seeks to provide goods or services pursuant to the E-Rate program, either directly or through any entity associated with the E-Rate vendor/service provider. An exception applies for items of *de minimus* intrinsic value, such as single greeting cards, basic key chains, and basic pens.

Where an E-Rate vendor/service provider ignores the E-Rate personnel's rejection of a gift, entertainment, or anything of value, or if the item was accepted by mistake, such items shall either be immediately returned to the vendor with an explanation that such items are not allowed pursuant to District policy or immediately submitted to the Office of Ethics and Compliance for proper disposal or donation to a charitable entity as determined by the Superintendent or designee. The Office of Ethics and Compliance shall log the details of such occurrences, including the disposition of the items. E-Rate personnel shall report to the Office of Ethics and Compliance all cases where gifts, entertainment, or other items of value have been offered by an E-Rate vendor/service provider. The Office of Ethics and Compliance shall take the appropriate steps to log the details of such occurrences, including any disposition of items, and communicate the District's policy to such E-Rate vendor or service provider.

Specific language asserting the District's policy shall be included in all E-Rate-related procurement documents and contracts.

Questions regarding gifts and conflicts of interests should be communicated to the Office of Ethics and Compliance via email to Ethics@houstonisd.org or the District's Ethics Hotline at (800) 455-9551.

Campaign Receipts and Business Relationships

Board members shall not knowingly accept campaign contributions from, or have a business relationship with, E-Rate vendors/service providers or individuals or entities seeking to provide goods or services pursuant to the E-Rate program, including related officers and/or key employees.

In the event that monetary contributions from E-Rate vendors/service providers are made to a Board member, that Board member shall be prohibited from voting on specific E-Rate contracts for three years if:

- Cumulative funds in excess of $500 in campaign contributions in a 365-day period are received from an E-Rate vendor/service provider taken as a whole; or
- Cumulative funds in excess of $2,000 in a single calendar year in the course of any business relationship are received from an E-Rate vendor/service provider taken as a whole.

Monitoring Campaign Receipts

Board members shall submit copies of each potential campaign contribution to Board Services prior to formal acceptance of or cashing such funds. Submissions shall be made within seven business days of donation date, or prior to any vote on any related contracts for contributions from known E-Rate vendors/service providers, whichever occurs first. Board Services and the Office of Ethics and Compliance shall research the items within 15 business days of receipt by the District to identify contributions from sources that require monitoring. All such contributions provided to Board Services shall be logged by the Office of Ethics and Compliance and their final disposition noted. Where the contributor is determined to be an E-Rate vendor/service provider, the ethics and compliance officer shall prepare a report on a calendar-year basis of the cumulative amounts for each respective E-Rate vendor/service provider taken as a whole. Upon completion of the research, the Office of Ethics and Compliance shall provide the results to the respective Board member. The Board members shall have the final authority to reject or accept each contribution. Once the $500 threshold is reached, the ethics and compliance officer shall inform the Superintendent and the President of the Board of Education that the maximum campaign receipt limit has been reached and the Board member is no longer eligible to vote on any contract with such E-Rate vendor/service provider for a three-year period from the date the maximum campaign contribution was dated, not deposited. Such action shall be reported in an abstention listing and provided to all Board members.

Monitoring Business Relationships

Board members shall report details of any business relationship with E-Rate vendors/service providers to the Office of Ethics and

Compliance. Once transactions from an E-Rate vendor/service provider to a Board member reach a total of $2,000 in a single calendar year, the Board member is no longer eligible to vote on any contract with such E-Rate vendor/service provider for a three-year period from the date the maximum amount was reached as determined by transaction date, not deposit date.

Any questions regarding campaign receipts and business relationships should be communicated to the Office of Ethics and Compliance or the Ethics Hotline.

Disclosure of Interest

Board members shall complete the District's Disclosure of Interest Form covering E-Rate matters on January 15 and July 15 of each year. The January report covers the period July 1-December 31 of the previous year and the July report covers the period January 1-June 30 of the current year. The Disclosure of Interest Form shall be submitted to Board Services, which will distribute the form to Ethics and Compliance for review and any necessary follow-up. This form shall be retained by Board Services.

Monitoring and Compliance Review

The Superintendent or designee shall establish a system of internal monitoring and compliance review, including the steps to be taken if any person suspects that:

1. Any bid, proposal, or submission for E-Rate funding or other E-Rate program-related conduct is not in accordance with Board policy; District-approved procurement procedures; local, state, or federal competitive bid statutes; other applicable laws, regulations, and procedures; or with E-Rate program rules and requirements;
2. Any gifts or other items of value have been offered or received by any party associated with, seeking to participate in, or otherwise involved in the District's E-Rate program; or
3. The District or any of its E-Rate vendors have improperly requested payment for goods or services not provided, or has overcharged for E-Rate goods and services.

As part of its monitoring and compliance review, the District's Ethics Hotline shall be publicized to allow anonymous reports of known, alleged, or suspected E-Rate noncompliance. The hotline shall be monitored by the Office of Ethics and Compliance in a timely manner.

Education / Training

The Superintendent or designee shall require education or training for all E-Rate program personnel.

The District shall consider the following sources:

1. Training materials available from USAC;
2. Information about E-Rate program rules (as periodically updated) typically found in the USAC Weekly Newsletter;
3. District policy;
4. Applicable federal, state, and local procurement laws;
5. The District's Conflict of Interest and Gift policies and the prohibition on gifts and other things of value;
6. E-Rate program rules regarding submission of invoices to USAC;
7. Commission rules and orders requiring a fair and open competitive bidding process; and
8. Consequences of noncompliance with E-Rate program rules and requirements, including cancellation of commitments, recoupment of disbursed E-Rate funds, suspension and debarment from the E-Rate program, criminal and civil prosecution, and appropriate disciplinary action, which may include termination of employment.

As part of the E-Rate training program, the Superintendent or designee shall require that the appropriate District representatives responsible for ensuring compliance with the E-Rate program rules and requirements and the E-Rate compliance program participate in the applicant training provided annually by USAC.

Compliance Officer

A high-level District employee shall serve as the ethics and compliance officer, who shall:

- Maintain and enforce E-Rate compliance.
- Have experience or obtain the necessary training in substantive areas, including procurement.

The ethics and compliance officer and any employees under their immediate supervision shall not be affiliated with or compensated by any service provider, consultant, or other outside entity with whom the District does business related to the E-Rate program.

Section IV: Standard Bidding and Contracting

The Superintendent shall establish procedures to ensure that the competitive bidding process for E-Rate goods and services is fair and open, and consistent with the rules and requirements of the FCC.

Code of Silence

The District shall implement a Code of Silence to enforce its commitment to ethical contracting standards and improve accountability and public confidence.

Vendor Relationships — Conflicts of Interest

It is important to avoid both the appearance of conflicts and actual conflicts of interest. The appearance of a conflict of interest is just as important as a real conflict. If an outside independent party might question the intent of a transaction or relationship, such transaction or relationship is deemed to create the appearance of a conflict and therefore, should be avoided. Circumstances related to an appearance of conflict include those that would cause a reasonable and informed third party, having knowledge of the relevant information, to reasonably conclude that a Board member or administrator has compromised objectivity related to a vendor relationship. [See BBFA]

For purposes of this policy, “vendor’s representative” shall mean an employee, partner, director, Board member or officer of a potential vendor or consultant, lobbyist, actual or potential subcontractor of a vendor, or any other individual or for-profit or nonprofit organization acting through or on behalf of any person seeking an award or on behalf of a group of interested individuals or members.

Procurement Methods

Texas Education Code Section 44.031 allows for the purchase of goods and services through one of the following methods:

- Competitive bidding for services other than construction services;
- Competitive sealed proposals for services other than construction services;
- An interlocal agreement;
- A request for proposals for services other than construction services;
- A method provided by Government Code Chapter 2269 for construction services;
- The reverse auction procedure as defined by Section 21.55062(d); or
- The formation of a political subdivision incorporated under Section 304.001, Local Government Code.

Applicability

The Code of Silence period applies to the acquisition of goods or services using the procurement methods identified above.

"Code of Silence" shall mean a prohibition on any communication regarding any request for proposals (RFP), bid, or other competitive solicitation (as defined in the procurement methods above) between:

1. Any person who seeks an award from the District or its affiliated entities (including, but not limited to, the HISD Foundation and the HISD Public Facility Corporation), including a potential vendor or vendor's representative; and

2. A Board member, the Superintendent, senior staff member, principal, department head, director, manager, or other District representative who has influence in the evaluation or selection process.

Furthermore, campaign contributions, gifts, donations, and any other items of value are prohibited between the parties defined above for any known contract under consideration during the Code of Silence period.

Also, candidates who have filed for election to the Board of Education are subject to these limitations after the date on which the candidate has filed for office. HISD shall review historical campaign finance reports to identify campaign contributions for the applicable period and hold newly elected Board members accountable as existing Board members during the Code of Silence period.

Exception

The Code of Silence shall not apply to communication with the District's attorneys, Purchasing Services staff, supplier diversity staff, controller, assistant controller, or chief financial officer who are not serving on the particular Project Evaluation Committee; or the Office of Ethics and Compliance. Such communications shall be limited to the purpose of obtaining clarification or information concerning the subject solicitation. An exception also applies to the Audit Committee of the Board of Education, other specific members of the Board of Education for the purposes of the selection of external auditors or the Board's legal counsel, and any other specific circumstances approved by the Board of Education.

Time Period

The Code of Silence time period shall begin upon the issuance of an RFP, bid, or other competitive solicitation (as defined under Procurement Method, above) and shall officially end the day after approval of the awarded contract by the Board of Education at an appropriately called meeting. Even after the Code of Silence has ended, at no time after the approval of an RFP, bid, or other competitive solicitation (as defined under Procurement Method, above)

by the Board of Education shall a vendor, potential vendor, or District employee attempt to improperly influence the negotiations of any contract that has been properly awarded in the appropriately called meeting.

A weekly email notification regarding the Code of Silence shall be sent to the Board of Education, Superintendent, senior staff member, department head, director, manager, or any other District representative who has influence in the evaluation or selection process for each RFP, bid, or other competitive solicitation (as defined under Procurement Method, above), and the Code of Silence shall remain in effect until the approval by the Board of Education as stated above. The Office of Finance shall also provide public notice on the District's website at the same time the email notification is sent.

Regardless of the above time period, it is not acceptable for a potential vendor to participate in determining the scope of work, strategic direction, technical specifications, or evaluation criteria of such projects.

Nothing contained in this policy shall prohibit any potential vendor or vendor's representative from:

1. Making public representations at scheduled pre-bid conferences or scheduled selection and negotiation committee meetings;
2. Engaging in contract negotiations during any scheduled meeting;
3. Making a public presentation to the Board during any duly noticed public meeting; or
4. Conducting business on contracts previously executed and currently in force.

The potential vendor or vendor's representative shall send all written communication directly to the designated Purchasing Services representative.

Nothing in this policy shall prohibit the Evaluation Committee's representative, who shall be an employee from the Purchasing Services Department, from contacting and communicating with a potential vendor or vendor's representative for the purposes of obtaining further clarifying information regarding a response to an RFP, bid, or competitive solicitation. Such contact shall be in writing and shall be provided to the members of the applicable Evaluation Committee, including any response thereto.

Violation

Any suspected violation of this policy shall be investigated by the Office of Ethics and Compliance, in consultation with the general counsel, Board counsel, and/or a contracted outside law firm. The investigation may result in the District deeming as void or voidable:

1. Any RFP, bid, or other competitive solicitation award;
2. Any bid award to the potential vendor or the vendor's representative; and
3. Any vendor's contract.

The potential vendor or vendor's representative determined to have violated this rule shall be subject to debarment from bidding and contracting activities regarding current and future projects for a period of up to two calendar years (24 months). In addition to any other penalty provided by law, violation of this rule by a District employee shall subject the employee to disciplinary action up to and including dismissal. Board members and candidates who have filed for election to the Board; who have violated the Code of Silence; and/or who have received campaign contributions, gifts, donations, or any other items of value from such vendor's representatives during the Code of Silence shall abstain from voting on such matters for a period of up to two calendar years (24 months).

In the event that a Board member or candidate unknowingly accepts a campaign contribution, gift, donation, or any other item of value from a vendor's representative during the Code of Silence, the Board member or candidate shall return the contribution within ten days after becoming aware of the conflict with this policy.

Formal Complaints

This policy is not intended to prohibit contractors and their representatives from issuing formal complaints or concerns about potential conflicts of interest during the Code of Silence. Such concerns should be communicated to the chief audit executive.

Description

The District Ethics Hotline is an independent, confidential, and toll-free 24-hour hotline that District employees and concerned citizens can use to report confirmed or suspected cases of theft, fraud, waste, or any other act of impropriety on the job by any member of the District. The Ethics Hotline is operated by trained specialists who can handle both emergency and routine cases.

How to Report

To help control internal abuse, any employee who sees something on the job that they feel is not right should contact their immediate supervisor. If the problem involves the supervisor or is not resolved, the employee is encouraged to report it via the Ethics Hotline:

- Ethics Hotline Number 1-800-455-9551
- Ethics Hotline Website[1]

Each report is assigned a unique code that allows the reporter to return for an update on the status of the report.

Responding to a Hotline Report

Hotline personnel will forward a summary of each case to the District's Office of Ethics and Compliance, which then either investigates the allegation or refers it to the appropriate administrator for response and action as necessary. The Office of Ethics and Compliance ensures the Ethics Hotline system is maintained and the reporter is provided a status of the case.

Consultation

This regulation has been through consultation (Administrative: April 8, 2008; Instructional: April 3, 2008; Noninstructional: April 8, 2008).

Maintenance Responsibility

The Office of Ethics and Compliance is responsible for maintenance of this regulation.

Effective Date

This regulation will be effective as of the adoption date, April 28, 2022.

[1] Ethics Hotline Website: https://houstonisd.ethicspoint.com/

Purpose

Participation by the Houston Independent School District (HISD) in the School and Libraries Program of the Universal Service Fund, commonly known as the E-Rate Program, is governed by Board policy CAA(LOCAL) and the following rules, requirements, and procedures. Relevant provisions of all other District policies shall also apply, but do not override the governing documents referenced above.

This regulation applies to E-Rate personnel defined herein.

Definitions

Universal Service Fund is part of the Universal Service Administrative Company (USAC), which falls under the direction of the Federal Communications Commission (FCC). The FCC provides discounts to schools and libraries for eligible services based on poverty levels. Such services include internet access and data transmission services, internal connections, basic maintenance of internal connections, and managed internal broadband services. Specific internal controls related to the E-Rate Program and requirements are included herein.

E-Rate Personnel includes:

1. All HISD officers, Board members, and employees involved in any aspect of the E-Rate Program.
2. Contractors (except for service providers that provide E-Rate supported services to HISD), consultants, agents, and other entities and individuals involved on behalf of HISD with the E-Rate program, including individuals who:
    a. Prepare, review, approve, sign, or submit E-Rate applications or other forms related to the E-Rate program, or
    b. Determine whether services are eligible for funding, prepare bids, or communicate or work with E-Rate service providers, E-Rate consultants, or USAC.
3. Office of Internal Audit staff members responsible for auditing and monitoring HISD's compliance with the E-Rate program rules.
4. The ethics and compliance officer who oversees E-Rate compliance.

E-Rate Vendor/Service Provider is defined as any external entity or individual, and any affiliates, involved in any aspect of the HISD E-Rate program, including but not limited to:

- Parent companies;
- Subsidiary companies;

- Joint ventures;
- Resellers;
- Consultants/contractors of the above entities;
- Board members/officers/owners of the above entities;
- Employees/representatives/salespersons of the above entities; and
- A list of E-Rate vendors/service providers for the District can be found in the HISD Directory under Office of Ethics & Compliance “E-rate Links.”

Ethics and Compliance Officer Objectives

The ethics and compliance officer’s objectives will be to:

1. Establish and maintain an E-Rate knowledgebase to stay abreast of changing regulations;
2. Maintain effective policies and procedures to comply with E-Rate program rules and regulations;
3. Assist in overall compliance of this regulation;
4. Provide leadership by acting as a change agent for the District; and
5. Other matters of importance for the District’s success.

Key Compliance Requirements

These requirements are intended to cover USAC E-Rate rules and procedures and in some cases are more stringent than USAC requirements. If there is any conflict between USAC rules, federal, state, local, or HISD Board policies, rules, or regulations, the more stringent requirement shall be followed. Employees shall consult with the ethics and compliance officer or Office of Legal Services when a conflict in Board policies, procedures, or rules exists or there is any doubt regarding the appropriate policy, rule, or regulation to follow.

Gifts and Conflicts of Interests

The appearance of a conflict of interest is just as important as a real conflict. If an outside independent party might question the intent of a transaction or relationship, such transaction or relationship is deemed to create the appearance of a conflict and therefore, should be avoided.

E-Rate program personnel are prohibited from accepting gifts, meals, entertainment, or anything of value from any outside entity, or any consultant or other individual representing such an entity that provides or seeks to provide goods or services pursuant to the E-Rate program either directly or through any entity associated with the E-Rate vendor/service provider. An exception applies for

items of *de minimis* intrinsic value, such as single greeting cards, basic key chains, and basic pens.

Where an E-Rate vendor/service provider ignores the E-Rate personnel's rejection of a gift, entertainment, or anything of value, or if the item was accepted by mistake, such items shall either be immediately returned to the vendor with an explanation that such items are not allowed pursuant to District policy or immediately submitted to the Office of Ethics and Compliance for proper disposal or donation to a charitable entity as determined by the Superintendent or designee. The Office of Ethics and Compliance shall log the details of such occurrences, including disposition of items. Furthermore, E-Rate personnel shall report to the ethics and compliance officer all cases where gifts, entertainment, or other items of value have been offered by an E-Rate vendor/service provider. The ethics and compliance officer shall take the appropriate steps to log the details of such occurrences, including any disposition of items, and communicate the District's policy to such E-Rate vendor or service provider.

Mandatory Quiet Period

Upon issuance of an RFP, bid, or other competitive solicitation and until the day after approval of the awarded contract by the Board of Education at an appropriately called meeting, E-Rate personnel, to the best of their knowledge, shall not communicate with any E-Rate vendor/service provider. The quiet period does not apply to existing contracts.

Maintenance of E-Rate Vendor / Service Provider Listing

The ethics and compliance officer shall develop and maintain an E-Rate Vendor/Service Provider Listing with assistance from the Technology Department, Office of Legal Services, and Purchasing Services Department.

Education / Training

The ethics and compliance officer shall establish a program to educate E-Rate personnel on an annual basis. It shall incorporate materials from USAC and provide information about:

1. E-Rate program rules (as periodically updated), applicable federal, state and local procurement laws, HISD conflict of interest and gift policies, and the prohibition on gifts and other things of value;
2. Those particular E-Rate program rules regarding submission of invoices to USAC, and the Commission's rules and orders requiring a "fair and open" competitive bidding process; and
3. The consequences of noncompliance with E-Rate program rules.

The ethics and compliance officer and other appropriate HISD representatives shall attend training sessions that USAC offers annually.

Internal Monitoring

Periodic risk assessments conducted by the Office of Internal Audit shall include risks associated with the E-Rate program. Where appropriate, the annual internal audit plan shall include audit projects covering such areas. Audit projects shall also consider a review of actual payments to vendors by USAC or the District to determine if such payments are proper payment for goods and services provided. The report shall make appropriate recommendations where necessary to improve the efficiency and effectiveness of overall compliance and include management's plan of action to mitigate control weaknesses or resolve audit findings. Reports shall be made available to USAC upon request. Appropriate follow-up shall be conducted to ensure adequate closure of audit findings prior to subsequent year's funding requests.

E-Rate Hotline

The Office of Ethics and Compliance shall:

1. Publicize the USAC E-Rate whistleblower hotline (1-888-203-8100);
2. Create and publicize the availability of an internal HISD Ethics hotline (1-800-455-9551) that HISD employees and other persons can use to anonymously report any known, alleged, or suspected noncompliance; and
3. Monitor the internal HISD Ethics hotline and investigate any matter reported. The HISD Ethics hotline shall be available 24 hours a day, seven days a week, and shall include prompts in English and Spanish.

Internet Safety and Protection

The Neighborhood Children's Internet Protection Act (NCIPA) requires recipients of federal technology funds for Internet access and/or internal connection services to comply with certain Internet filtering and policy requirements. A separate, but related provision of the Protecting Children in the 21st Century Act requires that policy include measures for educating minors about appropriate online behavior.

The Technology Department is responsible for Internet filtering and Educational Technology is responsible for educating minors about appropriate online behavior.

The District has a curriculum to educate minors about appropriate online behavior. The District utilizes web filtering services to block access to visual depictions that might be deemed obscene, child pornography, or harmful to minors. A District employee, student, or parent is able to report specific websites that fit these categories to

the District's service desk. The Technology Department shall evaluate the request and where appropriate, block the site from all computers within the District's network.

Annual Technology Needs Assessment

The chief technology officer shall coordinate an ongoing process to assess the District's technology infrastructure needs. An evergreen process will be used to ensure that opportunities to improve are not lost. This process assessment shall provide sufficient detail to assist the chief technology officer, IT manager over E-Rate matters, and chief financial officer in determining specific services/products and specific schools to apply for E-Rate funding. The process and supporting documentation shall be retained in accordance with the Document Retention section of this regulation.

Request for Proposal

E-Rate eligible goods and services shall be purchased by the Purchasing Services Department using the District's RFP procurement method to solicit competitive proposals from the supplier community. The Purchasing Services Department, Technology Department, and associated business departments, as needed, shall collaborate to compile the scope of work and evaluation criteria of each RFP related to the E-Rate program. Vendors are specifically not allowed to participate in this phase of the E-Rate program.

The RFPs shall correspond with the District's filing of its FCC Form 470 and must be open for at least 28 calendar days in accordance with USAC rules. The solicitation shall be advertised publicly in accordance with Texas Education Code (TEC) 44.031(g). Any and all prospective suppliers must be allowed to submit proposals, but only those suppliers who are registered with USAC and have been issued a Service Provider Identification Number (SPIN) may be considered for an award.

FCC Form 470 shall describe specific services or functions for support, identify the correct category of services, identify recipients of services, and follow all applicable state and local procurement laws.

The E-Rate RFPs must contain specific language which clearly spells out the responsibilities and requirements incumbent upon an E-Rate vendor/service supplier, including but not limited to, a certification statement that they understand USAC rules and regulations, SPIN registration, Service Provider Annual Certification registration, E-Rate invoicing procedures pertaining to FCC Forms 472 and 474, conflict of interest requirements and other matters deemed necessary. The Office of Ethics and Compliance shall coordinate such language with the Purchasing Services Department and Office of Legal Services.

During the period of time the RFP process is open, communications regarding the open RFPs between District personnel, including Board members, and the supplier community is limited to the designated Purchasing Services representatives. Such communications must assure open and fair competition with full disclosure to all RFP participants. The designated representative must be named in the RFP and shall function as the point of contact with the supplier community to handle all communications from vendors or other persons interested in the RFP during the course of the proposal and selection process.

Further, the E-Rate RFPs must specify a due date, time, and place for the receipt of proposals. All bids received must be sealed and unopened until the designated time occurs.

In accordance with the Purchasing Services Department's standard practice and as required per TEC 44.031(g) and USAC regulations, proposal openings must occur after the 28-day waiting period.

Participants in the preparation of the RFP shall provide final approval of the technical specifications to the designated Purchasing Services representatives. File copies of FCC Form 470 shall contain the signature of all parties who contributed in preparing the document, supervisory review, quality assurance from E-Rate consultant, compliance oversight, and formal approval parties. All supporting documentation shall be retained with formal audit trails in accordance with the Document Retention section of this regulation.

Evaluation of Proposals

When bids are opened, the proposing company names must be documented by the Purchasing Services Department.

Committees of representative stakeholders must evaluate the proposals. The committees must be chaired and facilitated by a Purchasing Services representative, who shall be responsible for all communications to and from the supplier community during the evaluation period and all documentation covering the proposal tabulation process.

The evaluation committees shall score each of the proposals that are submitted using a comparative, numerical system designed to promote open and fair competition. In accordance with USAC rules, price must be considered the most heavily weighted criterion in the evaluation, but other aspects of a supplier's effectiveness, such as quality of products and services, are also evaluated. A weighted system is used to gage the respective value of the various criteria. The weights may differ slightly from project to project but price will always carry the heaviest weight. For instance, a cabling installation project may have a heavier scope of services

weight than a project for simple delivery of goods, but price will be the most heavily weighted criterion in either case. The following criteria may be used to evaluate E-Rate projects.

- Scope of services offered, certifications, technical resources;
- Purchase price;
- Past experience with HISD/other kindergarten–grade 12 districts;
- M/WBE participation;
- Completeness of proposal response; and
- Reputation, references, good workmanship, financial stability.

The evaluation committees shall work independently of other District management not on the committee, senior administration, and the Board of Education. The committee shall score each supplier, perform the calculations, and make recommendations in accordance with the data. Where the committee selects an RFP with higher-than-average pricing, as compared with other vendor proposals received, a detailed explanation shall be documented. The Purchasing Services Department representative must assure that all aspects of TEC 44.031(b) are considered by the committee, thereby assuring compliance with state procurement laws.

A formal audit trail containing signatures of each evaluation committee member, dates of meetings and those in attendance, tabulation summaries of all bids (both winning and losing bids), and conclusions reached shall be maintained by the Purchasing Services representative in accordance with retention requirements in the Document Retention section of this regulation.

The recommendations of the evaluation committee shall be reviewed and approved by the Purchasing Services category manager, officer and/or general manager of Purchasing Services, the chief technology officer, the IT manager for E-Rate matters, the ethics and compliance officer, and the chief financial officer. Following that approval process, the recommendations will be prepared for the Board of Education and presented to the Board of Education for a vote. In any case, if the recommendations from the evaluation committee are overridden by any party for any reason, the committee shall communicate such to the ethics and compliance officer and Office of Internal Audit. The committee members shall document the details of the override, including the overriding parties' name, the basis for the override, and if the member believes or suspects any wrongdoing.

Contracting

Following Board of Education approval, contracts are drafted and executed with the Board-awarded suppliers, as applicable. The ethics and compliance officer shall coordinate with the Office of Legal Services to ensure the District's standard contract form contains any express language required for E-Rate matters. The forms of agreement used may follow the District's standard forms, the suppliers' standard forms, or forms adopted by the Texas Department of Information Resources. Regardless of which form is used, the Office of Legal Services shall review and approve such contracts to validate express language that suppliers understand and pledge to abide by USAC rules and regulations pertaining to E-Rate business and conflict of interest requirements.

Internal approval signatories for the District's E-Rate contracts include the general counsel, the chief financial officer, the Superintendent, the secretary of the Board of Education, and the president of the Board of Education. The Purchasing Services Department notifies the E-Rate vendor/service provider that they have been awarded the winning bid.

Following the execution of contracts, the IT manager for E-Rate matters and/or the E-Rate consultant shall complete the FCC Form 471, naming the service providers who have been awarded contracts under this process. The IT manager for E-Rate matters shall also be responsible for the preparation of supporting schedules to calculate the applicable discount level for each service requested using the percentage of students eligible for free and reduced lunches under the National School Lunch Program obtained from the District's Federal and State Compliance Department.

File copies of Form 471 shall contain the signature of all parties who contributed in preparing the document and supervisory review.

Application Review by USAC

Responses to USAC inquiries and requests for additional information shall be coordinated by the IT manager for E-Rate matters.

Funding Decision from USAC

A funding commitment decision letter is issued by USAC to communicate details of its decision to approve or deny the District's funding requests. The District may elect to purchase eligible E-Rate goods and services independently of USAC. In such case, the Chief Financial Officer shall approve such purchases.

Procurement Process

Individual requisitions and purchase orders must be subsequently entered in the District's ERP financial system to authorize and release specific pieces of work or specific purchases of goods for delivery. The requisitions pertaining to E-Rate goods and services shall be controlled and entered by the Technology Department as the preparer. The E-Rate requisitions are approved for funding by supervisory personnel in the Technology Department who did not

prepare the requisitions and are approved for adherence to District technology standards by specified Technology personnel. E-Rate purchase orders shall be prepared and approved by the respective Purchasing Services representatives. The E-Rate procurement process must follow all standard procurement policies and procedures, except where E-Rate requirements stated herein are more stringent.

Commencement of Services

The IT manager for E-Rate matters and/or the E-Rate consultant prepares FCC Form 486 to inform USAC that services have started. The IT manager for E-Rate matters approves the form. File copies of FCC Form 486 shall contain the signature of all parties who contributed in preparing the document, supervisory review, quality assurance from E-Rate consultant, compliance oversight, and formal approval parties. All supporting documentation shall be retained with formal audit trails in accordance with the Document Retention section.

Invoicing

Any E-Rate vendor/service provider that enters into a contract involving E-Rate funds with the District must adjust its billing policies and procedures to conform to the payment requirements of the USAC and E-Rate Program Rules. One of two invoicing methods shall be utilized:

1. FCC Form 472 where the District pays the full invoice amount upfront to the E-Rate vendor/service provider and completes documentation for USAC to reimburse the District for the E-Rate eligible discounted portion; or
2. FCC Form 474 where the District pays the E-Rate vendor/service provider only the non-discounted portion of an invoice and USAC pays the discounted portion.

In the case of FCC Form 474, the following rules shall apply:

1. Invoices shall contain all goods and services provided by the E-Rate vendor/service provider and shall reflect all charges to both the District and USAC. This invoice must contain a comprehensive itemization of all charges and clearly set forth the appropriate percentage of payments due from USAC and the District.
2. Invoices shall itemize all E-Rate eligible and ineligible goods and/or services being procured per the corresponding purchase order.
3. Invoices shall be submitted to and reviewed by the District prior to submission of the invoice to USAC. The E-Rate ven-

dor/service provider shall only be permitted to submit the invoice to USAC after receiving written approval from the District.

4. Invoices shall be free of variances between items delivered and items billed. If variances are found, the District will notify the E-Rate vendor/service provider of such variances and that the invoice has not been approved for payment. Corrected invoices must be re-submitted.

Invoice Matching And Approval

Free goods or services shall be excluded from E-Rate process. In addition, such invoices shall not be inflated to cover the cost of free goods or services.

The District is prohibited from allowing an E-Rate vendor/service provider to pay any portion of the District's allocated invoice (i.e., non-discounted portion pertaining to FCC Form 474 invoices)

Any benefit from pre-payment discounts shall be submitted to USAC.

The District shall pay its portion of an invoice no later than the time USAC makes its payment to the E-Rate vendor/service provider. Deferred payment plans will jeopardize a funding request.

Prior to payment, an authorized employee of the Technology Department shall inspect the receipt, installation, and/or quality of work performed by an E-Rate vendor/service provider and evidence such review by signature on the appropriate file copies which shall be submitted to the IT manager for E-Rate matters for retention in accordance with the Document Retention section of this regulation.

For exceptions identified during the invoice matching process, the Technology Department, Purchasing Services Department, and Accounts Payable Department representatives shall coordinate a resolution with the E-Rate vendor/service provider. Where applicable, a revised invoice shall be submitted to the District.

For exceptions identified during the inspection process relating to invoice approval, the Technology Department shall communicate such details to the Purchasing Services Department and Accounts Payable Department representatives, who will coordinate a resolution with the E-Rate vendor/service provider. Where applicable, a revised invoice shall be submitted to the District or the service work revised to allow re-inspection by the Technology Department.

Invoice Disputes

Invoice disputes shall be escalated by the Accounts Payable Department to the IT manager for E-Rate matters, who shall consult

with the E-Rate vendor/service provider as appropriate to resolve such matters in a timely fashion.

General Internal Control Requirements

At a minimum, the District shall adhere to the following approval matrix for E-Rate matters initiated after the approval date of this regulation. Compliance oversight shall be the responsibility of the ethics and compliance officer. The District may also request the services of an external consultant on certain E-Rate matters for an added layer of quality assurance. In addition, the IT manager for E-Rate matters shall create and maintain an E-Rate binder per the table of contents shown on the USAC website.

Document	Preparer Sign-off	Supervisor Sign-off	Final Release to USAC
USAC Forms & Attachments	IT E-Rate Functional Manager and/or E-Rate Consultant	IT Manager	Chief Financial Officer or Controller
Competitive Bidding Documents	Purchasing Services Category Specialist / Manager	Purchasing Services Management and IT Management	E-Rate Consultant
Response to PIA Process	IT E-Rate Functional Manager and/or E-Rate Consultant	IT Manager	E-Rate Consultant
Invoice Analysis for Payment	IT E-Rate Functional Manager and/or E-Rate Consultant	IT Manager	IT E-Rate Functional Manager and/or E-Rate Consultant

Document Retention

The IT manager for E-Rate matters and/or E-Rate consultant shall retain documents:

1. As required by 47 CFR 54.516; and
2. In accordance with the guidance in the *Schools and Libraries Universal Service Support Mechanism,* Seventh Report and Order, FCC 14-99 (adopted July 14, 2014) or such subsequent additional guidance as the FCC may provide.

Consequences of Noncompliance

Noncompliance with the District's E-Rate Policy or E-Rate program rules may be grounds for disciplinary action, including but not limited to, criminal and civil prosecution, warning, censure, reprimand,

suspension, loss of pay and dismissal, cancellation of contracts/commitments, recoupment of disbursed E-Rate funds, and suspension/debarment from the E-Rate program.

Remedies for Non-Compliance

The ethics and compliance officer shall communicate and consult with the District's Office of Legal Services, outside counsel, Superintendent's Cabinet, Superintendent, and/or the Board of Education or USAC where appropriate, to address the following areas, as necessary:

1. Material noncompliance or violations of the FCC E-Rate program rules;
2. Suspension of funding; and
3. FCC appeal/waiver process.

Contact Information

For questions relating to this regulation or any E-Rate matter, or to report any known, alleged, or suspected noncompliance with the E-Rate program, please contact the following:

- Office of Ethics and Compliance at (713) 556-6095 or by email at Ethics@houstonisd.org; or
- The HISD Ethics Hotline at 1-800-455-9551.

Maintenance Responsibility

The ethics and compliance officer is responsible for maintenance of this regulation.

Effective Date

This regulation will be effective as of the adoption date, April 28, 2022.

Use of Donations

General Rule

A conveyance, devise, or bequest of property for the benefit of the public schools, if not otherwise directed by the donor, vests the property in the board or their successors as trustees for those to be benefited by the donation. Funds or other property donated or the income from the property may be spent by the trustees:

1. For any purpose designated by the donor that is in keeping with the lawful purposes of the schools for the benefit of which the donation was made; or
2. For any legal purpose if a specific purpose is not designated by the donor.

Funds for Staff Positions

A district shall accept from a parent-teacher organization or association recognized by the district a donation designated to fund supplemental educational staff positions at a school campus and spend the donation accepted for the designated purpose at the direction of and within the time period specified by the campus for which the donation was designated. This provision expires September 1, 2025. [See DC]

Education Code 11.156

Prohibited Use

A district may not accept private funding for the purpose of developing a curriculum, purchasing or selecting curriculum materials, or providing teacher training or professional development related to a concept listed in Education Code 28.0022(a)(4)(A). *Education Code 28.0022(c)* [See EMB]

Charitable Raffles

A district is not a “qualified nonprofit organization” for purposes of the Charitable Raffle Enabling Act (Occupations Code 2002.001 et seq.). *Atty. Gen. Op. JM-1176 (1990)*

“Raffle” means the award of one or more prizes by chance at a single occasion among a pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize. *Occupations Code 2002.002(6)* [See also GKB]

Note: For purposes of this policy, the terms gift and donation have the same meaning.

Definitions

A gift or donation shall mean something bestowed voluntarily and without a fee to the District.

Gift

In-Kind

An in-kind donation shall mean a non-monetary contribution of goods, services, or property made to the District instead of cash. Examples include equipment, supplies, furniture, professional services, or the donation of time and expertise.

On Behalf of (Donations)

An on behalf of donation shall mean cash, goods, or services provided by a third party for the District's benefit or for the benefit of a specific campus, department, or program, with no District reimbursement.

Device

A device shall mean a tangible product, commodity, good, or instrument that has relative value or worth.

Donor

A donor shall mean an organization or individual who contributes a donation, device, or gift.

Voluntary and Unsolicited Gifts

The District, schools, programs, and classes may seek and accept gifts with approval from designated administration. The practice is permissible as long as it is truly voluntary and in no way a prerequisite to participation in any District program or activity. Furthermore, the District shall not solicit anything of value from known technology service providers who plan to participate or currently participate in the District's E-Rate Program. However, the District may accept voluntary philanthropic gifts initiated by such vendors where such actions further the educational mission of the District and comply with all aspects of this policy. Any statement or explanation related to a gift that may lead a reasonable person to believe the donation may not be truly voluntary shall be avoided.

Examples of such statements include, but are not limited to, a specified minimum amount of a gift, a date by which a gift is due, or a lesser gift amount if funds are received prior to a certain date. Additionally, any statement or action that exerts explicit or implicit pressure on a student or parent to make a gift shall be avoided. The reason a student or family does not make a gift is not a subject for inquiry.

Authority to Accept

All gifts or donations must be reported to the Grant Development Department, and fair market value must be documented for reporting and auditing purposes. The Grant Development Department requires all donations to be submitted with a *Donation Intent Form*

and Donation Letter to review and seek approval of unsolicited gifts. The donation process is as follows:

Any donations that are under a $5,000 cost or market value will require approval from the division superintendent or designee, or appropriate department designee, if applicable.

Any donation of $5,000 or more shall be approved by the Superintendent or designee.

Any gift that the potential donor has expressly made conditional upon the District's use for a specified purpose, or any gift of real property, shall require Board approval, except that gifts from recognized parent organizations, including parent-teacher organizations (PTOs), parent-teacher associations (PTAs), and booster clubs will be exempted from this requirement.

Any gift to the District that requires the prior approval of the Board shall be considered by the Board at its next regularly scheduled Board meeting following the date the gift was offered. The principal or appropriate department shall work with a member of the Superintendent's cabinet to submit an agenda item for Board approval.

Once accepted, a gift becomes the sole property of the District.

[For technology service provider contributions, see Technology Donations, below.]

Criteria for Acceptance

The District shall not accept any gift that would violate or conflict with policies of or actions by the Board or with federal or state law.

Before employees accept a gift or an agenda item is submitted for Board approval, the following shall be considered:

1. Does it have a purpose consistent with the District's educational philosophy, goals, and objectives;
2. Does it place any restrictions on a campus or District program;
3. Will it support a program that the Board may be unable or unwilling to continue when the donation of funds is exhausted;
4. Will it result in ancillary or ongoing costs for the District;
5. Does it require employment of additional personnel;
6. Does it require or imply the endorsement of a specific business or product [see GKB for advertising opportunities];
7. Will it result in inequitable funding, equipment, or resources among District schools or programs;

8. Does it obligate the District or a campus to engage in specific actions;

9. Is it connected to an existing contract, future promise, or future contract;

10. Does it create a controversy calling into doubt the appropriateness of the gift or donation;

11. Does it require factual determination as to the legal ownership of the gift; and

12. Does it affect the physical structure of a building or would require extensive maintenance on the part of the District and meets the District's design standards?

For real property, the Superintendent shall determine whether the title to the property has been transferred to the District.

Playground Equipment

Donated or used playground equipment shall not be accepted by the District. [See CS2(REGULATION)]

Technology Donations

Technology devices that are donated must be coordinated through the department of technology and information systems. A donation must meet the minimum approved standards as described in the Guidelines for Donated Equipment section of the *Technology and Information Systems Manual*.

Vehicle Donations

Before a vehicle may be accepted as a gift, a complete analysis must be conducted to determine if the vehicle is operational and will pass state inspection. All costs (i.e., repairs, maintenance, inspections, insurance, and the like) must be given careful consideration prior to determining if ownership is fully justified.

The following shall apply for vehicle donations:

1. The official title of ownership must be transferred to the District and placed in the possession of the property management department.

2. Vehicles with a free and clear title shall be considered.

Additional information regarding vehicle donations can be accessed in the *Finance Procedures Manual*, Section 908 — Donation of Vehicles to Schools.

Technology Service Providers

Anything of value offered by a technology service provider that is valued shall require Ethics and Compliance Office review prior to acceptance of the gift. Any technology device donations made by E-Rate vendors must also be reviewed by the Ethics and Compliance Office. [See CQ(LOCAL)]

Refusal of Gift	The Board and employees shall reserve the right to refuse any gift offered to the District, at any time and for any reason, as deemed appropriate by the Board and/or the Superintendent.
Donor Recognition	Recognition of the donor for the gift may be made at the school or department with approval from administration. Formal recognition may be made by the Board or the administration.
Solicitations	An employee who solicits gifts on behalf of the District or for use in the fulfillment of professional responsibilities shall comply with relevant state and federal law and any District administrative regulations. Any solicitation made on behalf of the District shall be routed through the Grant Development Department and recorded. All donations solicited on behalf of the District, including solicitations in the name of the District or a campus, or donations solicited using District or campus resources, become the sole property of the District
Web-Based Solicitations	An employee may solicit web-based donations of money or items for use by the employee in fulfilling professional responsibilities or for the District's use, including crowdfunding. However, an employee shall obtain prior approval from the employee's principal and/or division superintendent or designee before using the name or image of the District, a campus, or any student. [See CDC(REGULATION)]

This regulation describes the procedures and guidelines for the acceptance and utilization of donations, including both in-kind contributions and monetary gifts, to ensure proper management and compliance with donor intent and meeting the operational needs of Houston Independent School District campuses.

The District values and appreciates the generosity of donors. To ensure transparency and effective use of donated resources, the following guidelines must be adhered to.

Use of Donations

Within one year from the date of approval receipt, monetary donations must be spent, and utilization of in-kind donations must begin.

Timeliness of Spending

If monetary donations are not spent within the one-year timeframe, and no specific expenditure date is indicated by the donor, the funds or other resources will be allocated for general campus supplies and/or field trips. They will not be used for capital equipment or food.

Exceptions will be made for monetary donations that fund or supplement payroll, but only if the funds are in the account before the one-year limit.

Specificity of Use

Donations must be spent in accordance with the purpose outlined in the donation paperwork. This ensures that donor intent is honored and that resources are used as intended.

Any deviation from the stated purpose requires prior written consent from the donor.

Documentation and Reporting

All donations must be accompanied by appropriate paperwork detailing the purpose and any restrictions on use. This paperwork must be filed and retained for record-keeping purposes.

The District will maintain records of all donations and their expenditures or utilization to ensure compliance with this policy. This includes tracking the use of funds and other resources to verify that they align with donor intent and policy guidelines.

Unused Donations

If a donation of funds is not used within the specified timeframe and no specific allocation date has been provided by the donor, the funds will be redirected towards general campus supplies or field trips, excluding capital equipment and food.

Communication with Donors

The District will inform donors of how their contributions have been used, particularly if there is any change from the originally specified purpose. This ensures transparency and maintains trust.

If a change in the use of donations is necessary, HISD will seek approval from the donor before reallocating the funds.

Definition

For the purpose of this memorandum, the following definition applies.

Crowdfunding Internet Solicitations

Crowdfunding is the practice of funding a project or venture by raising small amounts of money from a large number of people, typically through the internet. The District-approved website for crowdfunding is DonorsChoose.org. All crowdfunding shall be requested by completing an *Authorization for Posting on DonorsChoose* form and if requested by a school must be consistent with the campus improvement plan. All requested resources must be used by students or directly provide a student experience. All requests must be approved by the principal or department head before posting to a website. Solicitations via a crowdfunding website shall not:

- Seek funding for the personal benefit of an individual or for political reasons;
- Request monetary donations that are not connected to the purchase of specific items. DonorsChoose receives the monetary donations on behalf of schools/departments and purchases the needed items for the school or department. No money is gifted to the school or department;
- Transfer donations from campus to campus or department to department;
- Request donated items be mailed to employee homes or an address other than the campus;
- Use personal, non-District email addresses for communication with donors; or
- Pressure parents or other District employees to make donations to the site beyond a general notification of the website.

Technology Donations

All donated technology equipment must go through the Grant Development Department.

Non-Standard Donated Computers and Computer Equipment

Technology equipment donated by an E-Rate vendor must be approved through the Office of Ethics and Compliance and must include a letter indicating the donation is not made with an expectation of special consideration given to the provider during any E-Rate procurements.

Non-standard donated computers are computers that do not conform to current District standards as posted on the District's intranet website (MyHISD — Department Sites — Information Technology — Hardware and Software). Along with computers, other items that may be included as donated items are monitors, keyboards, and mice.

Standard Donated Computer Equipment	Standard donated computers are computers that are purchased with donated funds from District-approved computer vendors, conform to the District's current computer standards, and include the District standard software load as posted on the Information Technology (IT) website.
Standard Operating System	Microsoft Windows Operating System (OS), Google Chrome OS, and Apple iOS and macOS are the District's standard operating systems.
District Standards	IT has specific hardware standards for computer installations. The criteria for donated computers and computer equipment are available on the IT website.
General Information	Hardware and software used on the District's network must adhere to basic standards that ensure they will connect to and communicate with the network without special consideration. Schools often need considerable support to properly install, maintain, and operate donated computers. This has led to unanticipated repairs and administrative costs. [See CQ(LOCAL) and CDC(LOCAL)]. In order to maintain a reasonable level of consistency and performance in the District's equipment, technical support will not be provided for non-standard donated computer hardware and software.
Guidelines	Guidelines for accepting donated computers and computer equipment are as follows.
District Minimum Standards	All computers, including non-standard donated computers, must meet District minimum specifications as listed on the IT website.
Classroom Computers	All donated computer equipment is to be used only in classrooms and cannot be used for administrative office purposes.
Software Requirements and Licensing	All donated computers must include physical installation as well as system software, along with OS licensing documentation. Donated computers meeting the District standard will require a technical designee at each location to install the District's standard configuration.
Network Access	Non-standard donated computers can only utilize the Wireless HISD-Guest network, which allows internet access only.
Printers	Non-standard network printers should not be accepted and will not be connected to the network.
Network Devices	Network devices (i.e., servers, switches, access points, etc.) should not be accepted and will not be connected to the network.
Maintenance	The District will not maintain non-standard donated equipment.

Policy Review	This regulation will be reviewed periodically to ensure its effectiveness and alignment with district needs and donor expectations. Updates will be made as necessary to reflect changes in board policy or operational requirements.
Contact Information	For questions or further information regarding this policy, please contact the District Grant Development Department.
Maintenance Responsibility	The director 2, External Funding (Titles I, II & IV) and Grant Development Departments, is responsible for maintenance of this regulation.
Effective Date	This regulation is effective as of the adoption date, December 20, 2024.

Texas Department of Agriculture Authority

The Texas Department of Agriculture (TDA) administers federal and state nutrition programs, including the National School Lunch Program (NSLP) under 42 U.S.C. Section 1751 et seq., and the School Breakfast Program (SBP) under 42 U.S.C. Section 1773. *Agriculture Code 12.0025*

Note: Regulations applicable to federal nutrition programs are found at the following:

7 C.F.R. 210: National School Lunch Program

7 C.F.R. 215: Special Milk Program for Children

7 C.F.R. 220: School Breakfast Program

7 C.F.R. 225: Summer Food Service Program

7 C.F.R. 245: Free and Reduced Price Eligibility

Program Compliance

TDA shall require that school food authorities (SFAs) comply with the applicable provisions 7 C.F.R. Part 210. TDA shall ensure compliance through audits, administrative reviews, technical assistance, training guidance materials or by other means. *7 C.F.R. 210.19(a)(3)*

[For the definition of "school food authority," see COA(LEGAL).]

Administrative Review

TDA must conduct administrative reviews of all SFAs participating in the NSLP (including the Afterschool Snacks and the Seamless Summer Option) and SBP at least once during a 5-year review cycle, provided that each SFA is reviewed at least once every 6 years in accordance with the review cycle observed under 7 C.F.R. 210.18(c).

"Administrative reviews" means the comprehensive evaluation of all SFAs participating in the specified programs. It includes a review of both critical and general areas in accordance with 7 C.F.R. 210.18(g) and (h), as applicable for each reviewed program. With U.S. Department of Agriculture Food and Nutrition Service approval, the administrative review may include other areas of program operations determined by TDA.

7 C.F.R. 210.18

Appeals

Appeals related to the federal food and nutrition programs administered by TDA and any actions affecting participation in such programs are governed by 4 Administrative Code, Chapter 26, Subchapter E. *4 TAC 26.200-.207*

Note: For recordkeeping and retention information, see TDA's Food and Nutrition Division *Administrator's Reference Manual*,[1] Section 30, *Records Retention*.

School Nutrition Professional Standards

An SFA that operates the NSLP or the SBP must establish and implement professional standards for school nutrition program directors, managers, and staff, as defined in 7 C.F.R. 210.2. *7 C.F.R. 210.30(a)*

Minimum Standards for Program Directors

Each SFA must ensure that all newly hired school nutrition program directors meet minimum hiring standards and ensure that all new and existing directors have completed the minimum annual training/education requirements for school nutrition program directors, as set forth in 7 C.F.R. 210.30. *7 C.F.R. 210.30(b)*

Note: All school nutrition program directors hired on or after July 1, 2015, must meet the required minimum educational requirements based on student enrollment. *7 C.F.R. 210.30(b)(1)*

Exempt Fundraisers

Schools that participate in the NSLP or SBP may sell food and beverages that do not meet nutritional standards outlined in 7 C.F.R. Parts 210 and 220 as part of a fundraiser, during the school day, for up to six days per school year on each school campus, provided that no specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service. *4 TAC 26.2*

Definitions

"School day" means the midnight before, to 30 minutes after the end of the official school day.

"School campus" means all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

4 TAC 26.1

Unpaid Meal Charges

State Law

The board of a district that allows students to use a prepaid meal card or account to purchase meals served at schools in the district shall adopt a grace period policy regarding the use of the cards or accounts. The policy:

1. Must allow a student whose meal card or account balance is exhausted or insufficient to continue, for a period determined by the board, to purchase meals by:
    a. Accumulating a negative balance on the student's card or account; or

b. Otherwise receiving an extension of credit from the district;

2. Must require the district to notify the parent of or person standing in parental relation to the student that the student's meal card or account balance is exhausted;

3. May not permit the district to charge a fee or interest in connection with meals purchased under item 1, above; and

4. May permit the district to set a schedule for repayment on the account balance as part of the notice to the parent or person standing in parental relation to the student.

Education Code 33.908

Federal Law

An SFA operating a NSLP and/or SBP must:

1. Have a written and clearly communicated meal charge policy in order to ensure a consistent and transparent approach to the issue of how students who pay the full or reduced price cost of a reimbursable meal are impacted by having insufficient funds on hand or in their account to purchase a meal.

2. Include policies regarding the collection of delinquent meal charge debt in the written meal charge policy.

3. Ensure that the policy is provided in writing to all households at the start of each school year and to households that transfer to the school during the school year.

4. Provide the meal charge policy to all school or SFA-level staff responsible for policy enforcement, including school food service professionals responsible for collecting payment for meals at the point of service, staff involved in notifying families of low or negative balances, and staff involved in enforcing any other aspects of the meal charge policy.

Excerpts from *USDA Memo SP 46-2016, Unpaid Meal Charges: Local Meal Charge Policies*[2] *(July 8, 2016)*

Lauren's Law

A district may not adopt any rule, policy, or program under Education Code 28.002(a), (k), (l), (l-1), or (l-2) that would prohibit a parent or grandparent of a student from providing any food product of the parent's or grandparent's choice to:

1. Children in the classroom of the child on the occasion of the child's birthday; or

2. Children at a school-designated function.

Education Code 28.002(l-3)(2)

Donation of Food

A district may allow a campus to elect to donate food to a nonprofit organization through a person who is directly and officially affiliated with the campus, including a teacher or counselor, or through a parent of a student enrolled at the campus. The donated food may be received, stored, and distributed on the campus. Food donated by the campus may include:

1. Surplus food prepared for breakfast, lunch, or dinner meals or snacks served from the campus cafeteria, subject to any applicable local, state, and federal requirements; or
2. Food donated to the campus as the result of a food drive or similar event.

The type of food donated under item 1 above may include:

1. Packaged unserved food that is packaged on the campus of a district and has not been removed from the campus cafeteria;
2. Packaged served food if the packaging and food are in good condition;
3. Whole, uncut produce; and
4. Wrapped raw unserved produce.

Food that by law must be maintained at a certain temperature for safety may not be donated unless the campus has maintained the food at the required temperature.

Food donated under these provisions to a nonprofit may be distributed at the campus at any time. Campus employees may assist in preparing and distributing the food as volunteers of the nonprofit organization.

Under this program, a district may adopt a policy under which the district provides food at no cost to a student for breakfast, lunch, or dinner meals or a snack if the student is unable to purchase such meals or snack.

Education Code 33.907

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[1] TDA's Food and Nutrition Division *Administrator's Reference Manual*: https://squaremeals.org/Programs/NationalSchoolLunchProgram/PolicyARM.aspx
[2] USDA Memo *Unpaid Meal Charges: Local Meal Charge Policies:* https://fns-prod.azureedge.us/sites/default/files/cn/SP46-2016os.pdf

Food Donation The Superintendent shall be authorized to develop regulations for the District to donate or otherwise dispose of leftover food in accordance with law.

Effective Date This policy shall be effective as of the adoption date, January 14, 2022.

General Information

1. The District implemented an employee uniform program for certain positions in the 1996–97 school year. The program was established as an additional security measure for District students and employees, and to improve employee morale.

   Employees who are provided District uniforms are required to wear the uniforms while on duty. District-provided uniforms, as well as other uniforms containing the standard District uniform insignia, should not be worn outside employee work hours or to non-District activities or functions.

   Most uniforms last about three years. New employees will receive uniforms based on uniform inventory as soon as possible after the hire date.

Uniform Color or Type

2. Positions requiring uniforms and descriptions of the uniforms are as follows:

   Management Employees

   a. Food Services management employee uniforms consist of a burgundy top with a District Food Services logo and blue or khaki trousers or a blue or khaki skirt.

   Regular Employees

   b. The Food Services employee uniform consists of a blue top with a District Food Services logo and blue or khaki trousers or a blue or khaki skirt.

Footwear

3. Black slip-resistant safety shoes are provided to all Food Services employees once per year.

Exception for Religious Reasons

4. In some instances, a female employee's religious beliefs may prohibit her from wearing uniform trousers. Those employees who qualify for or request this privilege may wear uniform dresses.

Uniform Coordinator

5. Food Services appoints a uniform coordinator annually. The uniform coordinator is responsible for ordering uniforms for the employees and ensures that all orders are processed, verified, and delivered in a timely manner. The uniform coordinator disseminates information to employees, supervisors, and vendors.

Employee Uniforms

6. Employee uniforms are obtained through the procurement process from the approved bid vendor as follows:

   Cafeteria Employees

   a. Each year, the uniforms are distributed during the first month of school. A limited quantity of uniforms is maintained in stock and can be requisitioned by the area manager through Systems Applications and Products in Data Processing (SAP).

Warehouse Distribution and Maintenance Uniforms

b. Warehouse Operations and maintenance uniforms are purchased in conjunction with the District's bid for uniforms. These uniforms are not maintained in stock.

Distribution

7. When an employee needs a uniform, he or she is referred to his or her area manager. The area manager contacts the uniform coordinator, receives the completed order, and distributes the uniform to the employee. Orders are filled based on availability. Proper identification is required before uniforms are issued.

   When Warehouse Operations or the area manager delivers the uniform, the employee must sign the delivery invoice.

Uniform Maintenance

8. After signing the delivery invoice, the employee is responsible for the condition of the uniform and must abide by the uniform policy as set forth in the Food Services Operations Policy and Procedures Manual.

Returning Used and Damaged Uniforms

9. If an employee damages a uniform, separates from the District, or is assigned to a position within the District that does not require the use of a uniform:

   - The employee must return the laundered and pressed uniform to his or her work location senior food service attendant, café manager, or area manager;
   - The work location senior food service attendant, café manager, or area manager visually inspects the uniform for damages and determines if the uniform is fit for use; and
   - The work location senior food service attendant, café manager, or area manager maintains the returned uniform at the work location and re-issues to new employees as needed.

Goods Receipt

10. The uniform vendor provides a packing list upon delivery of uniforms to Food Services. The receiving clerk verifies receipt of uniforms based on the line items on the packing list, and processes a Goods Receipt to authorize payment.

Consultation

11. This regulation has been through consultation (Administrative: January 15, 2008; Instructional: December 6, 2007; Noninstructional: December 11, 2007).

Maintenance Responsibility

12. The chief business officer, Business Services, is responsible for maintenance of this regulation.

Inspections of Kitchens and Lunchrooms

1. Inspections of the school lunchrooms will be made at least once every 30 days by Food Services supervisors to ensure maintenance of proper standards. See Reference (a) for a copy of a standard supervisor check list. All or any part of the items listed may be the subject of a supervisor's inspection. Administrative arrangements will be made to take immediate steps to correct any violations of regulations that may occur.

Consultation

2. This regulation does not require consultation.

Maintenance Responsibility

3. The chief business operations officer, Business Operations, is responsible for maintenance of this regulation.

REFERENCE:

(a) Form FS-22 – School Visit Check-Sheet Office of Food Services

Food Prices

Prior to the beginning of the school year, the Superintendent will present to the Board of Education a proposed price list of all lunches and á la carte items offered for sale by Food Services. The selling prices are recommended by Food Services after thorough analysis of the previous year's operations, current bid prices, United States Department of Agriculture commodity allocations, general market conditions of the food industry, salary schedules, and federal reimbursement rates of the National School Lunch Program. The prices will remain in effect for the current school year unless operating conditions change to the extent that a price adjustment becomes necessary. The same process will govern changes in price.

Consultation

This regulation does not require consultation.

Maintenance Responsibility

The senior administrator, Food Services, is responsible for maintenance of this regulation.

Food Services

Finances

1. Food Services will be self-sustaining and will have one fund: the Food Services Fund. Financial accounting records and reports will be maintained according to the same generally accepted accounting procedures used in industry and business. Food Services will be required to ensure efficient handling of funds by following established accounting procedures as outlined below:

   - Sign for and transmit advance change to cashiers;
   - Verify daily deposits to authorized depositories;
   - Verify and sign the weekly Cashier's Activity Report (School Nutrition Accountability Program);
   - Secure Food Services funds in the school's designated safe until deposit is made by the money carrier;
   - Refuse to accept any personal checks for payment of meals; and
   - Refuse to extend personal credit for meals.

   Depreciation of Food Services equipment will be charged to “operations” as an operating expense consistent with generally accepted accounting procedures used in industry and business.

Staffing

2. The following guidelines will apply to Food Services staffing:

   Repair and Maintenance

   a. Food Services will be authorized to assign the necessary personnel to operate a repair and maintenance section for all food service equipment. Personnel will be recruited and hired through Noninstructional Staffing, Human Resources.

   Other

   b. Food Services will be authorized to assign the necessary personnel to receive, warehouse, and deliver food and supplies, including United States Department of Agriculture donated commodities, necessary to meet the requirements of individual units. Personnel will be recruited and hired through Noninstructional Staffing, Human Resources.

Food Services Advisory Committee

3. The Food Services Advisory Committee will be composed of Food Services central office administrators, principals, classroom teachers, parents, students, and Food Services representatives. The purpose of the committee will be to evaluate the Food Services operation and to develop plans for continued improvement where needed.

Food Services Handbook

4. A Food Services Operations Policies and Procedures Manual will be updated periodically and made available to all Food Services personnel. This manual will outlines operating procedures consistent with the operation of a cafeteria food establishment and in accordance with Board policies for a public school meal program. .

Consultation

5. This regulation does not require consultation.

Maintenance Responsibility

6. The chief business operations officer, Business Operations, is responsible for maintenance of this regulation.

Working Conditions

1. Working conditions for Food Services personnel will include:

School-Based Staff

a. All employees, full-time or hourly, will work the total scheduled hours. This excludes a 30-minute lunch period without pay.

Break Schedule

b. Based on federal and District policies established by the Board, all employees should observe breaks and lunchtime according to the scheduled hours per day.

Clothing Requirements

c. Food Services employees must wear the following required clothing:

- Clean uniforms;
- Hair nets completely covering the hair (to be worn at all times);
- Sturdy, preferably white, uniform type shoes; and
- Hose with dress uniforms; socks or hose with pants uniforms.

See References (a), (b), and (c).

Consultation

2. This regulation has been through consultation (Administrative: August 9, 2005; Instructional: September 1, 2005; Noninstructional: September 6, 2005).

Maintenance Responsibility

3. The chief business officer, Business Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DH(LOCAL)

(b) Board Policy DI(LOCAL)

(c) CO1(REGULATION)

Next Generation Technology

A district, in the administration of the district, shall consider using next generation technologies, including cryptocurrency, blockchain technology, robotic process automation, and artificial intelligence. *Gov't Code 2054.601*

Children's Internet Protection Act

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

Definitions

Harmful to Minors

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 to the material covered by a certification described at Certifications to the FCC, below, to which such certification relates. *47 U.S.C. 254(h)(7)(I)*

Universal Service Discounts (E-Rate)

An elementary or secondary school having computers with internet access may not receive universal service discount rates unless the 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 service 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 certification under 47 U.S.C. 254(h)(5)(B) is a certification that the district is:

1. Enforcing a policy of internet safety for minors that includes monitoring their online activities and the operation of a tech-

nology 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. Enforcing the operation of such technology protection measure during any use of such computers by minors; and

3. 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); 47 C.F.R. 54.520(c)(1)

With Respect to Adults

A certification under 47 U.S.C. 254(h)(5)(C) is a certification that the district is:

1. 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. Enforcing the operation of such technology protection measure during any use of such computers.

47 U.S.C. 254(h)(5)(C); 47 C.F.R. 54.520(c)(1)

Disabling for Adults

An administrator, supervisor, or other person authorized by the 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); 47 C.F.R. 54.520(c)(1)(ii)

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 the board or designee. *47 U.S.C. 254(l)(2)*

Noncompliance — A district that knowingly fails to submit required certifications shall not be eligible for discount services under the federal universal service support mechanism for schools until such certifications are submitted.

A district that knowingly fails to ensure the use of computers in accordance with the required certifications must reimburse any funds and discounts received under the federal universal service support mechanism for schools for the period in which there was noncompliance.

47 C.F.R. 54.520(d), (e); 47 U.S.C. 254(h)(5)(F)

ESEA Funding — No 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 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.

An administrator, supervisor, or other person authorized by the district may disable the technology protection measure to enable access for bona fide research or other lawful purposes.

Certification to U.S. Department of Education

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

20 U.S.C. 7131

Uniform Electronic Transactions Act (UETA)

The UETA (Business and Commerce Code Chapter 322) applies to electronic records and electronic signatures relating to a transaction. *Business and Commerce Code 322.003(a)*

The UETA applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. The UETA does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form. A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. This right may not be waived by agreement. *Business and Commerce Code 322.005(a)–(c)*

Except as otherwise provided in Business and Commerce Code 322.012(f), the UETA does not require a district to use or permit the use of electronic records or electronic signatures. *Business and Commerce Code 322.017(c)*

Records Retention

If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

1. Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

2. Remains accessible for later reference.

A record retained as an electronic record in accordance with the provisions above satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after January 1, 2002, specifically prohibits the use of an electronic record for the specified purpose.

Business and Commerce Code 322.012(a), (f)

[For more information on records management, see CPC.]

Definitions

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

Business and Commerce Code 322.002(7), (8), (15)

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(b)* [See 1 Administrative Code Chapter 203 for DIR rules related to management of electronic transactions and signed records.]

"Digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature. *Gov't Code 2054.060(e)(1)*

Interception of Communications

For information on the unlawful interception, use, or disclosure of communications, see the Electronic Communications Privacy Act (18 USC 2510–2523 [federal wiretap act] and 2701–2713 [Stored Communications Act]) and Penal Code 16.02 (state wiretap law) and 16.04 (Unlawful Access to Stored Communications).

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” and “technology resources” mean electronic communication systems and electronic equipment.

Applicability

This policy shall govern all students, employees (part-time or full-time), contractors, consultants, temporary employees, vendors, and other individuals affiliated with third parties who access any District-owned information, property, or device.

In addition, this policy shall govern all information systems for which the District has administrative responsibility including all information created, processed, or used in support of the District’s business, without respect to form or format.

Definition

User

The term “user” shall refer to all categories of individuals who access any District-owned information, property, or device including, but not limited to, a student, an employee (part-time and full-time), a contractor, a consultant, a temporary employee, a vendor, and any individual affiliated with a third party.

Security Framework

District information technology (IT) resources, such as, but not limited to computers, networks, network connectivity, information, storage, email accounts, and the like shall only be provided for approved academic and business purposes by the office of the Chief Technology Officer (CTO), IT, and Information Security. The District shall implement the necessary controls over access to data via a combination of adequate physical, system, remote access and application-based security mechanisms.

In an effort to protect the sensitive information under District care, authorized access to District IT resources shall be limited to the access permissions required for an individual to perform assigned duties or academic activities. Access permissions beyond those needed for those duties or activities shall not be granted.

Passwords shall never be shared with anyone, including District IT security administrators.

Users of District IT resources do not have an expectation of privacy. The District shall reserve the right to monitor and/or record any and all use of District IT resources to ensure compliance with prevailing laws, policies, and regulations to identify misuse as well as for general resource management purposes. [See Children’s Internet Protection Act (CIPA), Family Education Rights and Privacy

Act (FERPA)] Use of District IT resources constitutes acceptance of this policy.

As an additional protection measure, District information, including personally identifiable information, shall not be released except through approved processes and in accordance with governing laws. [See references above]

Violations for misuse of District IT resources may result in the imposition of administrative, civil, or criminal penalties.

Technology Resources

The Department of Information and Technology Systems, in coordination with various user departments, shall be responsible for analysis, development, maintenance, and operation of technology resources for both instructional and administrative purposes. These resources shall provide and facilitate instruction to students, as well as gather, process, and report information relating to all administrative functions within the District.

The District shall maintain and support the goals outlined in the Long-Range Plan for Technology. Any purchase of technology shall support the goals of the District as outlined in the Long-Range Plan for Technology.

Availability of Access

Access to the District's wide-area networks (WANs), local area networks (LANs), and technology resources, including the internet, shall be made available to students and employees primarily for instructional and administrative purposes and in accordance with guidelines set forth in the *Technology and Information Systems Policies and Procedures Manual.*

Limited Personal Use

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

- Imposes no tangible cost on the District;
- Does not unduly burden the District's technology resources; and
- 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:

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

Acceptable Use

The Superintendent 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.

The District's Acceptable Use Policy is available at CQ(EXHIBIT) — B. [See policy FNCE for student-owned devices]

Internet Safety

The Superintendent shall develop and implement an internet safety plan to:

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

Filtering

Access to the internet via the District's network systems shall be filtered to block access to visual depictions that are obscene, pornographic, inappropriate for students, or harmful to minors, as defined by the federal CIPA and as determined by the Superintendent.

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

Monitored Use

Electronic mail transmissions, social media, and other use of the District's technology resources by students, employees, and members of the public shall not be considered confidential and may be monitored at any time by designated District staff 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, or costs incurred by users. The District shall not be responsible for ensuring the availability of the District's technology resources or the accuracy 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 records management program. [See CPC(LOCAL)]

Electronically Signed Documents

At the District's discretion, the District may make certain transactions available online, including student admissions documents, student grade and performance information, contracts for goods and services, and employment documents.

To the extent the District offers transactions electronically, the District may accept electronic signatures in accordance with this policy.

When accepting electronically signed documents or digital signatures, the District shall comply with rules adopted by the Department of Information Resources, to the extent practicable, to:

- Authenticate a digital signature for a written electronic communication sent to the District;
- Maintain all records as required by law;
- Ensure that records are created and maintained in a secure environment;
- Maintain appropriate internal controls on the use of electronic signatures;
- Implement means of confirming transactions; and
- Train staff on related procedures as necessary.

Procurement of Software

The District has an ongoing need for the implementation of major applications to meet business and student data management and reporting requirements. The District shall pursue the acquisition of commercially packaged software to meet these business needs in lieu of developing systems in-house unless the following criteria

cannot be met. For a software package to be considered, it should meet 80 percent of the user requirements and be able to be implemented within project cost and time constraints. In addition, any packaged software acquired should not be customized by the District.

Allocations

Technology resources shall be allocated to meet the requirements of state mandates in accordance with the needs of schools as defined in the school improvement plans and as reflected in the goals of the Long-Range Plan for Technology. All acquisitions of technology resources, both hardware and software, must be reviewed and coordinated by the Department of Information and Technology Systems in accordance with the *Technology and Information Systems Policies and Procedures Manual* and shall meet the requirements described in the *Finance Procedures Manual.*

HISD BULLETIN BOARD

1. The objective of the HISD Bulletin Board Events is to provide a means for the effective and efficient dissemination of information of a temporary nature.

2. The HISD Bulletin Board Events is a weekly electronic document designed to circulate announcements of special events and other items of general interest (e.g., workshops, benefits, directory updates, upcoming student contests, the District cable TV schedule, retirements, school-based events, sporting events, etc.) to Houston Independent School District (HISD) employees, students, parents, and to the general public. Information published on the bulletin board is prepared by the HISD Information Center and posted online every Monday. The HISD Bulletin Board Events is available to employees and the public on *HISDConnect*, the District Web site, at www.houstonisd.org.

SUBMISSION PROCEDURES

3. Procedures for preparing and submitting items for publication are as follows:

TEMPLATE

a. Employees interested in submitting a bulletin board item should use the template available on the HISD Bulletin Board Events tab located on the *HISDConnect* Web site at www.houstonisd.org. See Exhibit (1). Individuals from external entities should consult the criteria outlined in paragraph 3.b.(2).

PREPARING AND SUBMITTING ITEM(S)

b. Items for the HISD Bulletin Board Events may be submitted by internal or external individuals, departments, or entities:

INTERNAL

(1) The originating HISD department is responsible for preparing the item(s) and securing approval from the appropriate department head and direct report to the Superintendent, if necessary, prior to submission of the item(s). Upon approval, the originating HISD department must submit the item(s) and relevant attachments electronically to the manager, HISD Information Center. Acceptable submissions are restricted to events relevant to HISD students, parents, or employees and may not contain product or service advertisements. The HISD Information Center reserves the right to edit or reject any submissions.

EXTERNAL

(2) Individuals with external companies or organizations are responsible for preparing the items and submitting them electronically to the manager, HISD Information Center. Content is restricted to

events relevant to HISD students, parents, or employees and may not contain product or service advertisements. HISD reserves the right to edit or reject submissions.

TIME LINE FOR SUBMISSION

c. All items and attachments from internal departments and external entities must be submitted electronically to InfoCenter@houstonisd.org allowing at least one week notice for publication. Submissions received with inadequate notice will be returned to the sender unpublished.

DISTRIBUTION

d. The HISD Bulletin Board Events is maintained online by the HISD Information Center. The manager, HISD Information Center, electronically submits the information to be posted on the bulletin board to the supervisor, Portal Services, for publication on *HISDConnect*, the District Web site.

CONSULTATION

4. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

5. The manager, HISD Information Center, is responsible for maintenance of this regulation.

EXHIBIT:

(1) CQ(EXHIBIT)

TECHNOLOGY RESOURCES

CQ2
(REGULATION)

DEFINITIONS

1. For the purpose of this regulation, the following definitions will apply:

EXTERNAL LINK

a. An external link is a link to a site or content that is not hosted on an official District Web server.

CONTENT

b. Content is school-related information published on the school's Web page.

SERVER

c. A server is a computer that handles requests for data, e-mails, file transfers, and other network services from other computers.

EXTERNAL SITE

d. A site found on the World Wide Web.

GENERAL INFORMATION

2. All District computers are to be used by students and employees for school-related business purposes only. District Web sites are maintained by authorized District employees. Web site designs must adhere to District guidelines. See References (a) and (c). All Web pages, links, and content must be academic in nature, school-related, and appropriate for the educational purpose.

WEB SITE REQUIREMENTS

3. Web site requirements are as follows:

CONTENT

a. All Web site content should conform to Board policies and guidelines in accordance with References (a) and (c).

DISTRICT WEB SITES

b. All Web sites must adhere to established school guidelines. See Reference (c). The principal is ultimately responsible for all decision-making concerning the school's Web site. See Reference (b).

LAWS

c. All content must comply with copyright laws and should not violate federal, state, or local laws. See References (a), (c), and (e).

ENDORSEMENT

4. Any advertisement that promotes a commercial entity is not permitted on District Web sites. See References (a) and (c).

VENDOR LINKS

5. If an external link is used on a school's Web site, the following disclaimer must be placed on the school's main navigation page: "HISD is not responsible for contents on external sites or servers."

NONCOMPLIANCE

6. Anyone found to be in noncompliance with the procedures outlined in this regulation may be subject to suspension or termination of Web site privileges and subject to disciplinary action in accordance with References (a), (c), and (d) as appropriate.

CONSULTATION

7. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

8. The chief financial officer, Finance, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy CQ(LOCAL)

(b) BP3(REGULATION)

(c) Technology and Information Systems Policies and Procedures Manual

(d) Student Code of Conduct

(e) HISD Acceptable Use Policy for Electronic Services for Students

GENERAL INFORMATION

1. District employees are provided a computer workstation to carry out daily tasks and a network password to protect access to District information. Paramount to all usage is the need to keep information secure. Only the employee who has been assigned a password has use and knowledge of the password. The practice of sharing a password with a coworker is prohibited due to the accountability associated with the password. To further protect the employee and the integrity of the system, the District has initiated the use of the mandatory password protected screen saver. See Reference (a).

GUIDELINES

2. Technology and Information Systems established a procedure that configures all District computers and applications to lock after 15 minutes of inactivity. This step is necessary to protect the critical integrity of the operating system, application programs, and data files. Applications such as PeopleSoft, SAP, and Chancery must operate as expected and the data they use must be complete and correct. Otherwise, users lose productivity and may report false information. The guidelines for maintaining the integrity of the system are as follows:

PASSWORD

a. Passwords are used to maintain privacy and to secure sensitive information. Passwords may consist of letters, numbers, and other characters and must be changed every 180 days. The user is prompted by the computer when it is necessary to change the password. See References (a) and (b).

SCREEN SAVER

b. A Microsoft Windows password protected screen saver is automatically activated after 15 minutes of inactivity that locks the user's computer workstation.

LOGIN

c. The user must login to the AD domain with his or her network password to unlock the computer workstation thus disabling the password protected screen saver.

APPLICATION PROGRAMS

d. The District's Enterprise Resource Planning applications, PeopleSoft, SAP, and Chancery have built-in timeout features that will log out the user after 15 minutes of inactivity in these applications, even though the user may be working in other applications on his or her computer. Any unsaved data will be lost.

CONSULTATION

3. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

4. The chief financial officer, Finance is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy CQ(LOCAL)

(b) Manual – *Technology & Information Systems* Manual

General Information

Enterprise-level application systems and servers, including Web-hosted applications, require central-level networking support and management. These systems and servers are located both inside and outside of the District's firewall. In the event of an emergency, these systems require administration and intervention by District networking department administrators. Immediate response in emergency situations is impossible if the enterprise systems are physically located outside the District data center.

Definitions

For the purpose of this regulation, the following definitions will apply:

Enterprise-Level Application Systems

An enterprise-level application system is an integrated information system that serves multiple campuses or departments within the District and automates services more effectively and efficiently. Characteristics of an enterprise-level application system include:

- Database required for the system; and/or
- Multiple campuses' or departments' use of the system.

Firewall

A firewall protects a computer network from unauthorized access. Network firewalls may be hardware devices, software programs, or a combination of the two. Network firewalls may also be configured to limit access to the outside from internal users.

Web Hosting

Web-hosted applications are services and software applications maintained on servers that are delivered electronically across the internet.

Server

A server is a hardware device that functions as an access control point for users in connecting to the District's internal network. A server can also refer to a computer or cloud instance that has been set aside to run a specific server software application.

Security Risk

Many departmental or campus application hosting requests are tied to the need for administrator control over the servers, therefore allowing vendor access to data and vendor resolution of programmatic issues. A network security risk may exist with vendors that have access to the District information technology infrastructure through the internet. Ensuring vendors have the least privileged level of access to data and resources as part of the requirements for the service should be enforced.

Guidelines

All enterprise-level application systems or servers must be physically located in the District's Hattie Mae White Educational Support data center or hosted in one of our approved vendor clouds environments in order to receive:

- Improved operations efficiency;

- Reduced costs for power and cooling;
- Faster and more efficient connection times;
- Continuous networking department support seven days a weeks, 24 hours a day; and
- Benefits of a formal change advisory board that schedules, reports, and monitors changes to the technology infrastructure.

The District-supported software standards for enterprise-level application systems are:

- Microsoft Windows server: versions currently receiving updates and patches from Microsoft;
- Microsoft Structured Query Language (SQL): versions currently receiving updates and patches from Microsoft;
- Microsoft Internet Information Services (IIS);
- Microsoft .Net framework;
- District-purchased software and hardware; and
- District-purchased cloud environment providers.

[See CQ(LOCAL) and the *Technology and Information Systems Policies and Procedures Manual*]

Protection and Access to Enterprise Data

Data integrations between the District and third-party providers will be required for the implementation of the contracted functionality. The District should only be providing student and staff data to third parties who have a signed Data Sharing Agreement with the District. [See FL3(REGULATION)] This requirement exists for repeated integrations (daily, weekly, monthly) or for one-time data requests not following Open Records Request protocols.

Protection of Student Information

Access to Analytics for Education (A4E) dashboards, reports, and metrics should be granted in ways consistent with existing District privacy and confidentiality requirements, policies, and regulations. [See CQ(LOCAL)] The A4E dashboards, reports, and metrics are designed for use by principals, teachers, chief school officers, and District personnel. These employees receive automatic access to the dashboards designed for their job roles.

Other faculty and staff members may be given access to A4E information resources. However, such access enables these users to view information not normally available to them and should be granted with caution and in compliance with CQ(LOCAL).

Procedure	For an employee to receive access to A4E information when the employee's job role does not automatically include such access, the employee must provide a request signed by his or her chief officer.
Consultation	This regulation does not require consultation.
Maintenance Responsibility	The chief technology officer, Information Technology, is responsible for maintenance of this regulation.
Effective Date	This regulation shall be effective as of the approval date, August 30, 2021.

Note: For information regarding use of the District's technology resources and electronic communications by Board members, see BBI(LOCAL). For student use of personal electronic devices, see FNCE. For additional provisions governing employee use of electronic media, see DH(LOCAL) and the employee handbook. For information regarding District, campus, and classroom websites, see CQA. For information regarding intellectual property and copyright compliance, see CY.

General Information

The Superintendent or designee and the chief technology officer (CTO) will oversee the District's technology resources, meaning electronic communication systems and electronic equipment.

The District will develop and implement acceptable use guidelines covering acceptable use of the District's technology resources. [See CQ(EXHIBIT)-B] District employees and contractors can access the acceptable use policy for District technology resources on the District's employee portal.

Filtering

The Superintendent will designate the CTO to select, implement, and maintain appropriate technology for filtering material considered inappropriate or harmful to minors. All internet access will be filtered for minors and adults on the District's network and computers.

Inappropriate Material

The following guidelines will apply:

The categories of material considered inappropriate and to which access will be blocked will include, but not be limited to, nudity/pornography; images or descriptions of sexual acts; promotion of violence, illegal use of weapons, drug use, discrimination, or participation in hate groups; instructions for performing criminal acts (e.g., bomb making); and online gambling.

Requests to Disable Filter

The CTO will consider and maintain documentation of requests from users who wish to use a blocked site for bona fide research or other lawful purposes. The CTO will review and evaluate the risk, may consult as necessary, then decide regarding approval or disapproval of disabling the filter for the requested use. Requests to disable a filter should be emailed to HELPDESK@houstonisd.org[1].

Access

Access to the District's technology resources will be governed as follows:

Student Access

Students in kindergarten–grade 12 will be granted access to the District's technology resources by the principal or designee, as appropriate.

	Students are responsible for using their user ID and password when logging on to District computers and District-issued mobile devices.
Student Training	Students granted access to the District's technology resources must complete any applicable user training.
Class Account	As appropriate and with the written approval of the immediate supervisor and completion of District network training, District employees will be granted access to the District's technology resources.
Passwords	The District will require that all faculty and staff passwords be changed every 90 days. All passwords must remain confidential and should not be shared.
Access Denial	Any user identified as a security risk or as having violated District and/or campus use guidelines may be denied access to the District's technology resources.
Limited Personal Use	Resources are to be used mainly for educational and administrative purposes, but some limited personal use is permitted.
Student Participation in Social Media	Participation in approved social media sites using the District's technology resources for educational and administrative purposes is permissible for students under appropriate supervision. Students participating in social media using the District's technology resources should assume that all shared content, including pictures, is public. No personally identifying information should be published. Students should not respond to requests for personally identifying information or contact from unknown individuals. Information about the date, time, and location of District field trips should not be shared. [See Reporting Violations, below]
Disciplinary Action	The CTO and principal will:
Notice	• Notify the appropriate administrator of incidents requiring District response and disciplinary measures; and
Monitor	• Be authorized to monitor or examine all system activities, including campus-based social media, as deemed appropriate to ensure student safety online and proper use of the District's technology resources.
Individual User Responsibilities	The following standards will apply to all users of the District's technology resources:
Protecting Account	The individual in whose name an account is issued will be responsible at all times for its proper use and for not sharing the password for that account with others.

Using District Resources	The District's technology resources may not be used for illegal purposes, in support of illegal activities, or for any other activity prohibited by District policy or guidelines.
Tampering with District Property	Users may not access the resources to knowingly alter, damage, or delete District property or information or to breach any other electronic equipment, network, or electronic communications system in violation of the law or District policy.
Vandalizing District Property	Users may not damage or vandalize electronic communication systems or electronic equipment, including knowingly or intentionally introducing a virus to a device or network, or not taking proper security steps to prevent making a device or network vulnerable, such as opening email messages from unknown senders and loading unauthorized software.
Disabling Filtering Property	Users may not disable, or attempt to disable, any filtering device used by the District.
Encrypting	Users may not purposely use encryption channels to avoid security review by system administrators except for appropriate business use as defined herein.
Using Another's Account	Users may not use another person's account.
Using Under False Pretense	Users may not pretend to be someone else when posting, transmitting, or receiving messages.
Tampering with Electronic Media	Users may not attempt to read, delete, copy, modify, or interfere with another user's posting, transmittal, or receipt of electronic media.
Harassment	Users may not engage in conduct that harasses or bullies others. [See DIA, FFH, and FFI]
Cyberbullying	Users may not send, post, or possess materials that are abusive, obscene, pornographic, sexually oriented, threatening, harassing, damaging to another's reputation, or illegal, including cyberbullying and "sexting." Users who access such material are expected to discontinue the access as quickly as possible and report the incident to a supervising teacher and/or technology coordinator.
Making Threats	Students may not use email or websites to engage in or encourage illegal behavior or to threaten school safety.
Using Inappropriate Language	Users may not use inappropriate language such as ethnic or racial slurs or any other inflammatory language.

Student Information	Students may not distribute personal information about themselves or others by means of the District's technology resources; this includes, but is not limited to, personal addresses and telephone numbers.
Personal Contact	Students may not respond to requests for personally identifying information or contact from unknown individuals.
Request for Information	Students should never make appointments to meet people whom they meet online and should report to a teacher or administrator if they receive any request for such a meeting.
Transmitting Information	Users may not post or transmit pictures of students without obtaining prior permission from all individuals depicted or from parents of depicted students who are under the age of 18.
Intellectual Rights	Users must not violate intellectual property rights by redistributing copyrighted programs or data except with the written permission of the copyright holder or designee. Such permission must be specified in the document or must be obtained directly from the copyright holder or designee in accordance with applicable copyright laws, District policy, and administrative regulations.
Emails	Users should be mindful that use of school-related electronic mail addresses might cause some recipients or other readers of that mail to assume they represent the District or school, whether or not that was the user's intention.
Spam	Users may not waste the District's technology resources, including sending spam, chain letters, and the like.
Unauthorized Access	Users may not gain unauthorized access to resources or information.
Student Data	Users will not provide any student data to a third party without an executed Data Sharing Agreement.
Staff Data	Users will not provide any staff data to a third party without an executed Data Sharing Agreement.

Vandalism Any malicious attempt to harm or destroy District equipment or data or the data of another user of the District's technology resources or of any of the agencies or other networks that are connected to the internet is prohibited. Deliberate attempts to degrade or disrupt system performance are violations of District policy and administrative regulations and may constitute criminal activity under applicable state and federal laws. Such prohibited activity includes, but is not limited to, the uploading or creating of computer or network viruses.

Etiquette

In addition to the standards for online conduct, users of the District's technology resources are expected to observe the following standards for etiquette:

- Be polite; messages typed in capital letters are the computer equivalent of shouting and are considered rude.
- Be considerate when sending email attachments by taking into account whether a file may be too large to be accommodated by the recipient's technology resources or may be in a format unreadable by the recipient.
- Do not use the District's technology resources in such a way that would disrupt use for others.

Reporting Violations

Students and employees must immediately report any known violation of the District's applicable policies or acceptable use guidelines to a supervising teacher or the technology coordinator.

Requests for Personally Identifiable Information

Students and employees must report to a teacher or an administrator requests for personally identifying information or contact from unknown individuals, as well as any content or communication that is abusive, obscene, pornographic, sexually oriented, threatening, harassing, damaging to another's reputation, or illegal to federal and state compliance.

Sanctions

Inappropriate use of the District's technology resources may result in suspension or revocation of the privilege to use these resources, as well as other disciplinary or legal action, in accordance with applicable laws, District policies, the Student Code of Conduct, and District administrative regulations.

Termination / Revocation of Use

Termination of access for violation of District policies or regulations will be effective on the date the principal or Superintendent or designee receives notice of withdrawal or of revocation of system privileges or on a future date if so specified in the notice.

Disclaimer

The following guidelines will apply:

Opinions, advice, services, and all other information expressed by users, information providers, service providers, or other third-party individuals are those of the providers and not the District.

Cooperation with Law Enforcement

The District will cooperate fully with local, state, or federal officials in any investigation concerning or relating to misuse of the District's technology resources and will cooperate fully with law enforcement in response to any investigation or valid subpoena. [See GR series]

Campus Requests for Social Media	The District maintains a list of social media tools approved for use providing minimal security standards. To request access to a social media site (e.g., Facebook), a campus may submit a request to the District Helpdesk.
Consultation	This regulation does not require consultation.
Maintenance Responsibility	The chief technology officer, Information Technology, is responsible for maintenance of this regulation.
Effective Date	This regulation shall be effective as of the approval date, August 30, 2021.

[1] Request to disable filter email contact: HELPDESK@houstonisd.org

The following exhibits are used by the District:

Exhibit A: Item for the HISD Bulletin Board Events — 1 page

Exhibit B: Acceptable Use Policy for Electronic Services for Students — 4 pages

EXHIBIT A

ITEM FOR THE HISD BULLETIN BOARD EVENTS

For publication on (*date*): _____

Item Title: _____

Details (who, what, when, where, why): _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Attachment: _____

For more information, contact (*name and telephone number*): _____

_____

Submitted by (*name and title*): _____

Approved by (*department head name and title*): _____

Direct Report to the Superintendent: _____

EXHIBIT B

HOUSTON INDEPENDENT SCHOOL DISTRICT

ACCEPTABLE USE POLICY FOR ELECTRONIC SERVICES FOR STUDENTS

The Houston Independent School District (HISD) strongly believes in the educational value of electronic services and recognizes the potential to support curriculum and student learning by facilitating resource sharing, innovation, and communication.

Access to the Internet allows students to explore thousands of libraries, databases, museums, and other repositories of information. Families should be aware that some material accessible via the Internet may contain items that are inappropriate, inaccurate, or potentially offensive. While the purposes of the school are to use electronic resources for constructive educational goals, students may find ways to access other materials. The District believes that the benefits to students from electronic services in the form of information resources and opportunities for collaboration exceed the disadvantages. But ultimately, parents and guardians of minors are responsible for setting and conveying the standards that their children should follow when using media and information sources. Therefore, the District supports and respects each family's right to deny electronic services to their student by submitting an "opt-out" form to the school's principal [see below].

Authorized student use of information resources must be consistent with the educational purposes for which these resources have been provided. The use of HISD electronic services is to assist students in completing educational activities and should be used in a manner that enhances educational experiences and complies with HISD policies. All student users must adhere to the provisions of this Acceptable Use Policy as a condition for continued use of the HISD network. This policy must be followed anytime there is a connection to the District's wired or wireless network via any electronic device. HISD reserves the right to monitor any user's online activities. Users should have no expectation of privacy regarding their use of HISD property, including the network, Internet access, files, text, chat room conversations, and e-mail.

Internet Safety

In compliance with the Children's Internet Protection Act ("CIPA"), the Houston Independent School District is required to adopt and implement an Internet safety policy addressing: (a) access by minors to inappropriate matter on the Internet; (b) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications; (c) unauthorized access, including so-called "hacking," and other unlawful activities by minors online; (d) unauthorized disclosure, use, and dissemination of personal information regarding minors; and (e) measures restricting minors' access to materials harmful to them. Furthermore, each campus educates students on cyberbullying, appropriate online behavior, and social networking as required by Broadband Data Improvement Act.

1. HISD has implemented filtering and/or blocking software to restrict access to Internet sites containing pornography, obscene depictions, or other materials harmful to minors under 18 years of age, to the extent practicable, while using its network. This control also applies to other forms of communication such as e-mail, chat rooms, social net-

working sites, instant messaging, and the like. However, no software is foolproof, and there is still a risk a user may be exposed to a site or message containing such materials.

2. The student's parent or guardian is responsible for supervising and monitoring all computer usage that occurs outside the HISD network.

3. Students will not reveal personal information, including name, home address, telephone number, photos, and the like on the Internet. Students are advised to never access, keep, or send anything that they would not want the general public to see.

4. Students will not meet in person with anyone they have met only online via the Internet.

5. The user is personally responsible for his or her actions in accessing and utilizing the school's computer resources.

6. Students must abide by all laws, regulations, the Student Code of Conduct, Acceptable Use Policy, and other related HISD security policies.

Privacy

The Family Educational Rights and Privacy Act ("FERPA") is a federal law that protects the privacy of student education records. Under FERPA, parents or eligible students have the right to inspect and review the student's education records maintained by the school. Students and qualified parents can view certain educational records of the student online through HISD's Parent Student Connect portal. These records are safeguarded through all available means and access will be restricted to parents/guardians and the student through the use of user names and passwords.

Acceptable Actions

HISD students may use the network and electronic services provided by HISD to pursue educational activities. Students will learn how Internet resources can provide valuable educational information. Students will be expected to follow accepted rules of network etiquette. These rules include, but are not limited to the following:

- Be courteous and respectful. Do not send or display offensive messages or pictures.
- Use appropriate language in any type of communication. No profane, abusive, or impolite language will be used to communicate nor should materials be accessed that are not in line with the rules of school behavior.
- Keep personal information such as logins, passwords, addresses, and phone numbers confidential.
- Use electronic services for educational purposes only.
- If you encounter materials that violate the rules of appropriate use, disconnect immediately and notify an adult.

Unacceptable Actions

Improper use of electronic services provided by HISD is prohibited. Be prepared to be held accountable for your actions and for the loss of privileges if this Acceptable Use Policy is violated. In addition to the paragraph below labeled "Penalties for Improper Use," the HISD Student Code of Conduct addresses the consequences for violations. Actions that constitute unacceptable use include, but are not limited to the following:

- Do not use a computer to harm other people or their work.
- Do not damage the computer or the network in any way.
- Do not interfere with the operation of the network by installing software, shareware, or freeware, including the alteration of any controls designed to provide Internet safety or alteration of HISD's default computer image.
- Do not violate copyright laws or participate in any criminal activities punishable by law.
- Do not view, send, or display offensive messages or pictures.
- Do not share your password with another person or offer access to any person via your account.
- Do not reveal your personal address or phone numbers or those of other students or colleagues, including the completion of profile data.
- Do not waste limited resources such as disk space or printing capacity.
- Do not distribute advertisements, solicitations, commercial ventures, or political lobbying.
- Do not trespass in another's folders, work, or files.
- Do not pursue internal or external "hacking", use anonymous e-mail sites, spread viruses, initiate spam, or attempt to access inappropriate material.

All HISD students are granted access to all electronic services available. If you DO NOT want your student to have access to electronic services, please complete and submit the opt-out form and access will be denied.

Penalties for Improper Use

The use of the network is a privilege, not a right, and may be revoked if abused. Misuse, damage, or vandalism of HISD technology resources may also lead to disciplinary and/or legal action, including suspension, expulsion, or criminal prosecution by governmental authorities.

Disclaimer

HISD makes no guarantee about the quality of services provided and is not responsible for any claims, losses, damages, costs, or other obligations arising from the use of its network. Any charge accrued to the user of HISD's network are borne by the user. Statements by the

user on the Internet are from the author's individual point of view and do not represent the views of HISD, its employees, or members of the Board of Education.

Student and parental/guardian signatures on the Student Code of Conduct represent consent to conform to the Acceptable Use Policy.

Note: Copyright information can be found on the U.S. Copyright Office website.[1]

Copyright

Copyright protection subsists, in accordance with United States Code Title 17 (Title 17), 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

Copyright in a work protected under 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 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

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)*

Copyright Registration

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 delivering to the Copyright Office the deposit specified by 17 U.S.C. 408, together with the application and fee specified by 17 U.S.C. 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 (limitations on and scope of exclusive rights), the owner of a copyright has the exclusive rights:

1. To reproduce the copyrighted work in copies or phonorecords;
2. To prepare derivative works based upon the copyrighted work;

3. 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;

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

5. 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

6. 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

Notwithstanding the provisions of 17 U.S.C. 106 above and 106A (rights of authors of visual art works), the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

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

2. The nature of the copyrighted work.

3. The amount and substantiality 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

Notwithstanding the provisions of 17 U.S.C. 106, certain performances and displays set out in 17 U.S.C. 110 are not infringements of copyright, including 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 Title 17, and that the person responsible for the performance knew or had reason to believe was not lawfully made. *17 U.S.C. 110(1)*

Copyright Infringement

Anyone who violates any of the exclusive rights of the copyright owner as provided by 17 U.S.C. 106 through 122 or of the author as provided in 17 U.S.C. 106A(a), or who imports copies or phonorecords into the United States in violation of 17 U.S.C. 602, 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)

Note: For information on copyright issues and online distance learning, see the TEACH Act, 17 U.S.C. 110(2) and 112(f).

Digital Millennium Copyright Act

Service Provider

"Service provider" means:

1. As used in 17 U.S.C. 512(a) (item 1 at Limitation of Liability below), an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

2. As used in 17 U.S.C. 512, other than subsection (a), a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in item 1 above.

17 U.S.C. 512(k)

Limitation of Liability

A service provider shall not be liable for monetary relief or, except as provided in 17 U.S.C. 512(j), for injunctive or other equitable relief, for infringement of copyright by reason of:

1. The provider's transmitting, routing, or providing connections for material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if 17 U.S.C. 512(a)(1)–(5) are satisfied.

2. The intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which:

    a. The material is made available online by a person other than the service provider;

    b. The material is transmitted from the person described above through the system or network to a person other than the person described above at the direction of that other person; and

    c. The storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in item b, request access to the material from the person described in item a, if the conditions set forth in 17 U.S.C. 512(b)(2) are met.

3. The storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider:

    a. Does not have actual knowledge that the material or an 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;

    b. 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; and

    c. Upon notification of claimed infringement as described at Notification below responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

4. The provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider:

    a. Does not have actual knowledge that the material or activity 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;

b. 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; and

c. Upon notification of claimed infringement as described at Notification, below, responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this provision, the information described in item 3 at Notification, below, shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

17 U.S.C. 512(a)–(d)

Designated Agent

The limitations on liability established in item 3 at Limitation of Liability, above, apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described at Notification, below, by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office (the Office), substantially the following information:

1. The name, address, phone number, and electronic mail address of the agent.

2. Other contact information which the Register of Copyrights may deem appropriate.

17 U.S.C. 512(c)(2); 37 C.F.R. 201.38

The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the internet, and may require payment of a fee by service providers to cover the costs of maintaining the directory. *17 U.S.C. 512(c)(2)*

Amendment

All service providers must ensure the currency and accuracy of the information contained in designations submitted to the Office by timely updating information when it has changed. A service provider may amend a designation previously registered with the Office at any time to correct or update information.

Renewal

A service provider's designation will expire and become invalid three years after it is registered with the Office, unless the service provider renews such designation by either amending it to correct or update information or resubmitting it without amendment. Either amending or resubmitting a designation, as appropriate, begins a new three-year period before such designation must be renewed.

37 C.F.R. 201.38(c)(3)–(4)

Notification

To be effective, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
4. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

17 U.S.C. 512(c)(3)

Disabling or Removing Access

Subject to the exceptions below, 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.

Exceptions

The provision above shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under item 3c at Limitation of Liability, unless the service provider:

1. Takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

2. Upon receipt of a counter notification described in 17 U.S.C. 512(g)(3), promptly provides the person who provided the notification under item 3c with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in ten business days; and

3. Replaces the removed material and ceases disabling access to it not less than ten, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under item 3c that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

17 U.S.C. 512(g)

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)

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

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 established by United States Code Title 15, Chapter 22 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. *15 U.S.C. 1127*

Trademark Registration

The owner of a trademark used in commerce may request registration of its trademark on the principal register by paying the prescribed fee and filing in the USPTO an application and a verified statement, in such form as may be prescribed by the director of the USPTO, and such number of specimens or facsimiles of the mark as used as may be required by the director. *15 U.S.C. 1051(a)*

Duration

Each registration shall remain in force for ten years, except that the registration of any mark shall be canceled by the director unless the owner of the registration files in the USPTO affidavits that meet the requirements of 15 U.S.C. 1058(b) within the time periods specified in 15 U.S.C. 1058(a). *15 U.S.C. 1058*

Renewal

Subject to 15 U.S.C. 1058 above, each registration may be renewed for periods of ten years at the end of each successive ten-year period following the date of registration upon payment of the prescribed fee and the filing of a written application, in such form as may be prescribed by the director. Such application may be made at any time within one year before the end of each successive ten-year period for which the registration was issued or renewed, or it may be made within a grace period of six months after the end of each successive ten-year period, upon payment of a fee and surcharge prescribed therefor. *15 U.S.C. 1059(a)*

Assignment of 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. *15 U.S.C. 1060(a)(1)*

Trademark Infringement

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: Patent information can be found on the U.S. Patent and Trademark Office (USPTO) website.[3]

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 United States Code Title 35 (Title 35). *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*

Patent Infringement

Except as otherwise provided in Title 35, 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)

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

Intellectual Property

All copyrights, trademarks, and other intellectual property rights belonging to the District shall remain with the District at all times. Except as provided by law, policy, or written authorization from the Superintendent, the use of District intellectual property shall be limited to District-related purposes.

Students

A student shall retain all rights to their own 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 created 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 District employment, including the right to obtain patents or copyrights.

Employee Ownership

A District employee shall own any work or work product produced on personal time and with personal equipment and materials, including the right to obtain patents or copyrights.

Exception

The Superintendent or designee shall have the authority to permit use of District materials and equipment in developing the employee's own projects, provided the employee agrees in writing to grant to the District a nonexclusive, nontransferable, perpetual, royalty-free, District-wide 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.

Independent Contractors

The District may hire an independent contractor for specially commissioned works 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

Use of District technology in violation of any law, including copyright law, is prohibited. Only appropriately licensed images, applications, programs, or other software may be used with District technology resources. The District's technology resources shall not be used to post, publicize, or duplicate information in violation of copyright law. The Superintendent or designee shall employ all reasonable measures to prevent the use of District technology resources in violation of the law. Any person using District technology resources in violation of law shall lose user privileges in addition to other sanctions. [See BBI and CQ]

Performances and Displays

The display and performance of copyrighted material, including motion pictures, dramatic works, musical performances, or other audio and visual works, may only occur as part of instructional activities and in accordance with the following:

- As a regular part of teaching and directly related to the curriculum;
- During face-to-face teaching activities;
- When viewed in a classroom or designated place of instruction; and
- With a lawfully made copy or through authorized access.

Social Media

The use of copyrighted material is prohibited in social media unless a license or permission has been obtained.

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 website 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 a school-related business or activity. The Superintendent or designee shall determine what constitutes use in furtherance of a 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 public, outside organizations, vendors, commercial manufacturers, wholesalers, and retailers shall not use District trademarks without written authorization from 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 or campus trademarks without appropriate authorization may be subject to legal action.

INFORMATION

1. The District has served as a lighthouse for other educational institutions through the development of numerous systems, products, and procedures for the enhancement of education. Although many of the District's developments will continue to be shared without charge to other districts, some products or services have such high value and development costs, that the District has created a marketing effort to recover these costs. In addition to internal developments, the District has formed beneficial partnerships with private firms and established agreements with other districts to market products or services. See Reference (a).

MARKETING PROCESS

2. To ensure quality and consistency and provide structured coordination in the marketing of products or services, the District has established a marketing department. Marketing and Business Development oversees the marketing process that consists of products or services evaluation, and the marketing effort. See Exhibit (2)

PRODUCTS OR SERVICES EVALUATION

a. The products or services evaluation process begins with the Marketing Evaluation Questionnaire that must be completed by the employee, internal department, individual, or entity wishing to market products or services. See Exhibit (1). Procedures for processing the products or services evaluation are as follows:

MARKET EVALUATION

(1) The completed Marketing Evaluation Questionnaire is submitted to Marketing and Business Development. Marketing and Business Development provides assistance, if necessary, in completing the questionnaire. See Exhibit (1)

REVIEW

(2) After completing the questionnaire, the proposing employee, internal department, individual, or entity meets with the marketing staff member to review all aspects of the products or services. See Exhibit (2).

RECOMMENDATION

(3) After review of the Marketing Evaluation Questionnaire and discussion with the employee or department, Marketing and Business Development develops a recommendation based on products or services derived from the employee, individual, or entity and submits a summary proposal through the chief financial officer to the Superintendent. Marketing and Business Development reviews proposals submitted by the District's departments, develops a recommendation and summary proposal, and submits them and any relevant materials to the

chief financial officer. The chief financial officer determines if the product or service should be offered free of charge or marketed for revenue and submits a recommendation to the Superintendent.

APPROVAL

(4) The Superintendent has been given authority by the HISD Board of Education to approve direct recommendations for contracts or agreements from Marketing and Business Development and recommendations from the chief financial officer. Some ventures, however, are submitted as agenda items by the issuing department to the Superintendent. The Superintendent submits the agenda item to the Board for approval. After approval by the Board, the employee, internal department, individual, or entity is notified of the Board's decision and works with Marketing and Business Development to initiate the marketing effort.

Inquiries regarding the status of a venture may be referred to the consultant, Marketing and Business Development, at (713)556-6675.

MARKETING EFFORT

b. Marketing and Business Development in coordination with the employee, internal department, individual, or entity may engage in some or all of the following activities to market the products or services:

- Conduct market research;
- Develop a marketing strategy;
- Write a marketing plan;
- Create marketing materials;
- Contact prospects;
- Make marketing presentations;
- Negotiate and write contracts;
- Build customer relations;
- Create interlocal agreements for Superintendent's approval;
- Sell products or services to customers; and
- Issue receipts and account for results of operations.

EMPLOYEE CONTRACTS FOR PRODUCTS OR SERVICES

3. The District's interest in potential revenue from the sale of any District-owned products or services must be protected. See Reference (b) for guidelines regarding protective clauses applicable to employees.

CONSULTATION

4. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

5. The consultant, Marketing and Business Development, is responsible for maintenance of this regulation.

REFERENCES:

(a) CY3(REGULATION)

(b) CY2(REGULATION)

EXHIBITS:

(1) CY(EXHIBIT), Exhibit A

(2) CY(EXHIBIT), Exhibit B

INTERNALLY DEVELOPED PRODUCTS AND SERVICES

1. The following definitions apply to this regulation on internally developed products and services:

COPYRIGHT

a. A copyright gives the owner of the copyright the exclusive right to authorize others to reproduce, prepare derivative works, distribute copies, and perform or display original works of the author. [See References (a) and (b)] Only the author or those deriving their right through the author can rightfully claim copyright. The employer is considered the author of works prepared by an employee within the scope of his or her employment, or of works specially ordered or commissioned, unless there is an agreement to the contrary. Some categories of works are generally not eligible for federal copyright protection. [See Reference (c)] These include, but are not limited to, the following:

- Works that have not been fixed in a tangible form of expression (improvisational speeches or performances that have not been written or recorded);
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; and mere listings of ingredients or contents;
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration; and
- Works consisting entirely of information that is common property and containing no original authorship.

PATENTS

b. A patent is a government grant that gives a person or a company the right to exclude others from making, using, offering for sale, selling, or importing the invention under patent. All rights to inventions or discoveries arising from research conducted by an employee within the scope of his or her employment will belong to the Houston Independent School District (HISD). Patents should be obtained to protect HISD's rights to these inventions or discoveries.

TRADEMARK

c. A trademark includes any word, name, symbol, or any combination, used or intended to be used, in commerce to identify and distinguish the goods of one manufacturer

or seller from goods manufactured or sold by others, and to indicate the source of the goods. In short, a trademark is a brand name.

SERVICE MARK

d. A service mark is any word, name, symbol, device, or any combination, used, or intended to be used, in commerce, to identify and distinguish the services of one provider from services provided by others, and to indicate the source of the services.

NONDISCLOSURE CLAUSE

e. The nondisclosure clause describes the employee's responsibilities regarding confidential or trade secret information and defines what the District considers to be confidential. Any information that is public knowledge or that the employee had prior to being employed cannot be included in a nondisclosure agreement.

NONCOMPETE CLAUSE

f. A noncompete clause prevents former employees from engaging in activities in competition with the employer for a specified period of time. A noncompete clause must be no broader than necessary to protect the legitimate business interest of the employer and not place an undue hardship on the employee's ability to earn a livelihood.

MARKETING OF PRODUCTS

2. Various products and services used by District staff members have been developed by employees of the District. Such products and services are expensive to develop and potentially have commercial value if offered for sale outside the District. In order to facilitate the District's ability to recover the development costs and to generate revenue for further development, products and services that have commercial value will be marketed through the District's Marketing Department.

EMPLOYEE CONTRACTS

3. It is important to protect the District's interest in potential revenue from the sale of any District-owned product by ensuring that contracts with employees include the following conditions:

OWNERSHIP

a. Contracts will include language that provides that the District retains sole ownership and any rights attached to products or services developed by individuals while in the employment of the District. The District will retain all rights to the product or service including, but not limited to, use of the product or service internally, and the right to sell and distribute the product or service externally.

COPYRIGHT

b. The contract will include a clause that gives the District ownership to any copyright or any applicable product

developed by the employee while on District time. Copyright protection will be claimed for all applicable works whether they are considered marketable or not.

PATENTS / TRADEMARKS / SERVICE MARKS

c. Employment contracts must include language to provide that HISD owns all patent, trademark, or service mark (i.e., mark) rights for any patents or mark obtained for any purpose when the item on which the patent or mark was obtained was produced by the employee on the District's time. Any employee who believes he or she has invented an item that has market value should check with HISD Legal Services at (713) 556-7245 to determine if a patent or trademark application is needed. For additional information, the United States Patent and Trademark Office Web site is www.uspto.gov.

NONDISCLOSURE CLAUSE

d. A nondisclosure clause will be added to the employment agreement, or for existing employees, added as a separate agreement, where needed, for specific projects. The nondisclosure agreement will require the employee to agree to hold, in confidence, specified information for a designated period of time. Employees should take steps to maintain confidentiality (i.e., using computer passwords, not removing sales lists from the premises, not copying documents to disk, and the like).

NONCOMPETE CLAUSE

e. A noncompete clause must be added to employment agreements or developed as a separate agreement for an existing employee before he or she works on projects that have commercial value.

CONTRACT REVIEW

4. In addition to review by Legal Services, all contracts must be reviewed by the chief financial officer prior to obtaining approval signature.

CONSULTATION

5. This regulation has been through consultation (Administrative August 9, 2011; Instructional: September 1, 2011).

MAINTENANCE RESPONSIBILITY

6. The general counsel, Legal Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy CY(LEGAL)

(b) CY4(REGULATION)

(c) United States Code Title 17 Copyright Act, 1996

CONTRACTS WITH EXTERNAL VENDORS AND CONSULTANTS

1. Contracts with external vendors or consultants hired for the purpose of producing products and delivering services have frequently been negotiated solely by departments or school staff. These negotiations have not always been advantageous for the District. It is important that all ownership interests, right to use, and potential revenue be protected through specific language included in contracts.

2. Contracts are legally binding instruments written between the District and producers of a product or service. Contracts that include the development of products or services are required to include language that establishes the following:

DISTRICT OWNERSHIP

a. The District will retain sole ownership of the product or service and any rights attached. These rights should be clearly stated in the contract. The District will retain all rights to the product or service including, but not limited to, the right to use the product or service internally, and the right to sell and distribute the product or service externally.

FEES PAID TO VENDORS

b. Fees paid to external vendors for products or services should not exceed a rate set by the District for such products or services. In the event that a comparative rate for products or services is not available, consideration should be given primarily to the value of the product or service to the District. While the return on investment may be considered if the product or service is to be marketed at a future date, the return on investment should not be used as the basis for determining the value of the product or service, except where items are specifically being developed as part of a planned marketing activity.

CONTRACT TERMS

c. Contract terms regarding compensation and deliverables (i.e., payment for services, schedule of invoices and payments, justification for nonpayment, contract cancellation provisions, or cause for deviation from stated compensation, etc.) must be clearly stated in the contract.

TRADEMARKS AND COPYRIGHTS

d. The contract should state that the District will own all rights, title, and interest assigned to any trademarks or copyrights attached to any product or service developed at the District under the contract, or to any product or service for which the District has provided the content. See References (a), (b), and (c).

COPYRIGHT MATERIAL OF THIRD PARTIES

3. Consultants or vendors providing products or services to the District must obtain releases for all copyrighted material used

in the development of District products. See Reference (c). Releases must include the right to use and sell the material as a part of the District's future marketing efforts without added fees. The cost of releases must be included in the contract if the copyrighted material is provided by the vendor or consultant. If the copyrighted material is to be provided by other parties, the cost of releases from those parties must be clearly stated in the Board of Education agenda item that authorizes the contract.

CONTRACT REVIEW

4. In addition to review by Legal Services, all contracts must be reviewed by the chief financial officer prior to the school or department obtaining approval signatures.

CONSULTATION

5. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

6. The manager, Marketing Department, is responsible for maintenance of this regulation.

REFERENCES:

(a) CY(LEGAL)

(b) CY4(REGULATION)

(c) United States Code Title 17 Copyright Act, 1996

COMPLIANCE WITH COPYRIGHT LAW

1. The Copyright Law of 1976 and subsequent amendments outline five basic rights of copyright owners: the right of reproduction, adaption, distribution, performance, and display. In summary, the law grants copyright owners the exclusive right to use and to authorize the use of a copyrighted work. Therefore, the unauthorized use of a copyrighted work in one or more of the five areas is an infringement of the law. See Reference (d).

COMPLIANCE PROCEDURES

2. It is the policy of the Houston Independent School District (HISD) to comply with the law. Notices to this effect are to be posted in areas where there are photocopiers, facsimile machines, or scanners. See References (a), (b), and (f). Employees of HISD will abide by the provisions of the current copyright law as it affects the District and its employees. The District does not sanction illegal duplication of copyrighted materials, whether such materials are in printed or nonprinted form. Employees who willfully violate the District's position regarding the copying of copyrighted materials do so at their own risk and assume all liabilities and responsibilities connected with their actions. For additional information on guidelines for classroom copying, see References (a) and (b).

COPYRIGHT SYMBOL

3. Typically, the indicator of a copyrighted work is the copyright symbol. Although the symbol is no longer mandated to preserve a copyright, the word copyright may appear, or a circle around the letter C may be used. Sometimes, this is followed by the year of the first publication and the words All Rights Reserved. The rights referred to are the bundle of rights, which represent the five basic rights of the copyright owner. The rights and privileges represented by the symbol, whether or not it is used, should be respected.

EXCEPTIONS

4. Exceptions to the exclusive rights enjoyed by copyright owners are the doctrines of:

FAIR USE

a. The fair use of a copyrighted work for the purposes of teaching, scholarships, or research is not an infringement of copyright.

b. Performance or display of a work by instructors or students in the course of face-to-face teaching activities in a classroom or other similar place devoted to instruction.

DISTRICT'S COPYRIGHT MATERIALS

5. The District will own the claim to copyright all copyrightable materials created by employees of the District within the scope of their employment or which are specially commissioned by the District to be created by employees and others. The chief of staff or designee will act as the District's autho-

rized agent for the purpose of registering claims to copyright for materials owned by the District. See Reference (c).

COPYRIGHT MATERIALS OF THIRD PARTIES

6. Employees wishing to obtain permission to duplicate copyright materials of third parties when the materials will be utilized on a Districtwide basis must prepare a Request for Copyright Permission. See Reference (e). The office of the chief of staff will also operate as a clearinghouse for granting permission to duplicate copyrighted materials owned by the District.

COPIES

7. Employees should request permission to reproduce copyrighted work from the owner. See Reference (e). The cost of reproducing the copyrighted materials is the responsibility of the requesting department or school.

DESIGNATED INDIVIDUAL

8. The Superintendent is responsible for designating an individual in the District to monitor and promote compliance with the law. This function has been assigned to the chief of staff or designee.

CONSULTATION

9. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

10. The general counsel, Legal Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy CY(LEGAL)

(b) Board Policy CY(LOCAL)

(c) CY2(REGULATION)

(d) Copyright Law of 1976

(e) Request for Copyright Permission (Sample)

(f) Notice to All Employees Regarding Copyright Restrictions

See the following exhibits:

Exhibit A: Marketing Evaluation Questionnaire – 3 pages

Exhibit B: Product or Service Market Evaluation Process – 1 page

Exhibit C: Approval for Marketing of Products or Services Through the Houston Independent School District to External Entities – 2 pages

EXHIBIT A

MARKETING EVALUATION QUESTIONNAIRE

We look forward to meeting with you regarding your interest in marketing your product or service. It is helpful for us to learn something about the product or service you wish to market prior to our meeting. The following questions are designed to prepare us for our meeting. Please give all the information you can even if you cannot fully answer any question. If a question is not applicable, type in NA. You can type your answers under each question. Thank you!

Product or Service

- Describe exactly what the product or service is.
- How is it used or delivered?
- Is the product or service ready to market or are there modifications to be made?
- Will recently passed state or federal legislation have an impact on the marketability of the product or service?
- What tangible and intangible benefits does the product or service provide to the user?
- Is use of the product or service mandatory or voluntary?
- Is use of the product or service one-time or repeated?
- Is follow-up action required either by your department or the client?
- What makes the product or service different from or superior to those of competitors?
- Is the product or service marketable outside the Texas market?
- What are the major considerations or objections to purchase or use of the product or service?
- Can the product or service be linked to or bundled with any other product or service developed at HISD?

People

<u>Client</u>

- Who would use the product or service?
- Do factors such as district size, student demographics, or district ranking make a district more likely to need or want the product or service?
- Who are the decision makers who determine purchase or use? Who else might be involved in making or influencing a decision?
- Would the client be required to provide staff for service delivery, train-the-trainer, implementation, or other activities?

Your Staff

- Who would provide training for or implementation of the product?
- Do you have enough people to provide training or implementation within HISD? To other districts?
- What would you have to do to meet a higher level of demand?
- Do you have sources for additional trainers or staff if needed?
- What special requirements or qualifications are needed to be able to deliver the product or service or provide training for it?
- What staff is available or needed to maintain product or service?

Competitors

- Who are your competitors?
- What level of market share does your competition have?

Place

- How is the product or service delivered?
- Are there special space or room requirements?
- Are there special requirements for delivery (i.e., computers, audio-visual, or other special equipment)?
- If the product is computer driven, will it operate on a standard PC?
- What materials are required for delivery (i.e., manuals, CDs, presentation booklets, etc.)?
- If a product, does its use require any training?
- What is the optimum ratio of instructor to user?
- How many hours or days are required for training or implementation?
- Are users required to use the product or service at an HISD location? Can you provide delivery at the client district's location?

Price

- How is the product or service priced?
- How much (approximately) have you spent to develop the product or service?
- What are the costs of maintaining the product on a use or time basis (i.e., Do you have to update the product on a periodic basis and what costs are attached to that effort? 5Ms, materials, manpower, machines, money, methods)?
- What are the costs for materials or systems used with the product or service?

- What are your competitors charging?
- Is price ever an objection to purchasing the product or service?

Promotion

- Have you verified that any name, logo, or trademark that you wish to use to identify and promote your product or service is not already registered for use by someone else?
- What activities are you presently using to promote the product or service?
- Do you have any collateral materials (i.e., brochures, PowerPoint presentation, posters, letters, etc.)?
- Do you have testimonials from present users?
- Do you have biographies of developers, instructors, etc.?
- Is special packaging required?
- Do you have a database of present or potential customers?
- Do you have a post-purchase tracking system?

EXHIBIT B

PRODUCT OR SERVICE MARKET EVALUATION PROCESS

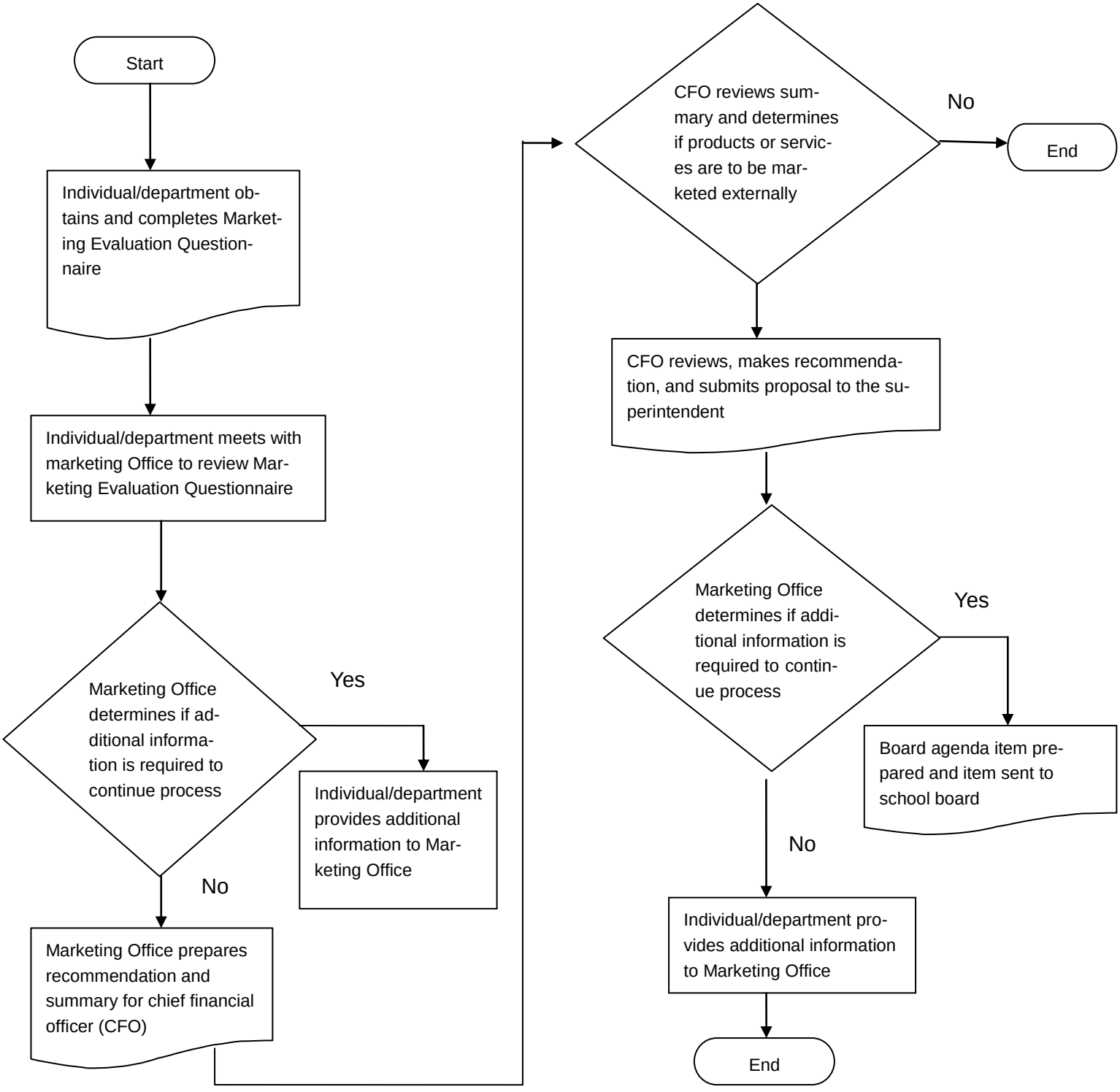


EXHIBIT C

APPROVAL FOR MARKETING OF PRODUCTS OR SERVICES
THROUGH HISD TO EXTERNAL ENTITIES

This exhibit concerns the marketing of products or services generated through employees, internal departments, individuals, or external entities. This approval process is exercised as needed.

CONTRACTS

Responsible Party	Level of Authority	Requirements and Other Information
Houston Independent School District Board of Education	Agenda item authorizing major implementation of a new product or service	
Superintendent	Recommendation of a product or service for external marketing to the Houston Independent School District (HISD) Board of Education Recommendations of the Chief Financial Officer and approval of agreements	A recommendation and proposal from the Marketing Department approved by the Chief Financial Officer; and A written agreement for approval by the Superintendent or a Board agenda item

RECOMMENDATION

Responsible Party	Level of Authority	Requirements and Other Information
Chief of Staff	Recommendation of a product or service to Superintendent	A Board agenda item recommending the product or service for external marketing; or A written agreement
Consultant, Marketing and Business Development	Develop recommendation and Summary Proposal based on product or service for submission to Chief Financial Officer	A market evaluation to determine the need for a product or service

From the appropriate area of responsibility: Superintendent's Cabinet	Submission of proposal to Marketing Department Submission of agenda item to the Superintendent	Development of a recommendation for the marketing of a product or service
Employee, internal department, individual, or external entity	Submission of proposal to Marketing Department or Direct Report	Development of a product or service

1. References.

   CY1(REGULATION)

2. The consultant, Marketing Department, is responsible for maintenance of this exhibit.

Note: This policy addresses the prohibition against discrimination, harassment, and retaliation in hiring and discharging employees and with respect to compensation, terms, conditions, or privileges of employment. For provisions related to complaints of discrimination, harassment, and retaliation based on a protected characteristic, see DIA.

Table of Contents

Unlawful Employment Discrimination 3
Federal Law 3
State Law 4
Discriminatory Practices 4
Disparate Treatment 4
Disparate Impact 4
Limited Exception—Bona Fide Job Qualification 4
Racial Discrimination 4
Religious Discrimination 4
Burden on Free Exercise 5
Unlawful Inquiry into Religious Affiliation 5
Sex Discrimination 5
Pregnancy 5
Gay and Transgender 5
Gender Stereotypes 5
Equal Pay 5
Age Discrimination 5
Bona Fide Employee Benefit Plan 5
Disability Discrimination 6
Discrimination Based on Lack of Disability 6
Definition of Disability 6
Other Definitions 7
Reasonable Accommodations 8
Discrimination Based on Relationship 8
Illegal Drugs and Alcohol 8
Qualification Standards 9
Service Animals 9
Genetic Information Nondiscrimination Act 10

Definitions 10
Prohibited Practices 10
Manifested Condition 11
Inadvertent Acquisition....11
Exceptions 11
Requests for Medical Information 12
Confidentiality 13
Pregnant Workers Fairness Act-....15
Interactive Process 15
Denial of Employment Opportunities 15
Required Leave....15
Adverse Action....15
Definitions 15
Other Forms of Discrimination....19
Military Service....19
Bankruptcy Discrimination 19
Student Loan Repayment 19
Harassment-Free Workplace 19
Sexual Harassment....19
National Origin Harassment....21
Severe and Pervasive....21
Prevention....21
Responsibility for Harassment by Third Parties 21
Prohibition on Retaliation....22
Notices....22
Section 504 Notice....22
Employment Postings 22

Unlawful Employment Discrimination

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

1. Race, color, or national origin;
2. Religion;
3. Sex;
4. Age;
5. Disability;
6. Genetic information; or
7. Pregnancy.

Federal Law

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

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

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

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

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

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

Title IX of the Education Amendments of 1972 (Title IX) — sex. *20 U.S.C. 1681*

Pregnant Workers Fairness Act (PWFA) — pregnancy. *42 U.S.C. 2000gg et seq.*

Note: Title VII, the ADA, GINA, and PWFA do not apply to employers unless the employer has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. *42 U.S.C. 2000e(b); 42 U.S.C. 12111(5); 42 U.S.C. 2000ff(2)(B); 42 U.S.C. 2000gg(2)(B)*

State Law	Texas Commission on Human Rights Act (TCHRA)—race, color, disability, religion, sex, national origin, age, and genetic information. *Labor Code 21.051, .402* State policy on employment of persons with disabilities. *Human Resources Code 121.003(f)*
Discriminatory Practices	Title VII proscribes employment practices that are overtly discriminatory (disparate treatment), as well as those that are fair in form but discriminatory in practice (disparate impact). *Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)*
Disparate Treatment	Disparate treatment (intentional discrimination) occurs when members of a protected group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. *29 C.F.R. 1607.11*
Disparate Impact	Disparate impact occurs when an employer uses a particular employment practice that causes a disparate (disproportionate) impact on a protected group and the employer fails to demonstrate that the challenged practice is job-related and consistent with business necessity. *42 U.S.C. 2000e-2(k)(1)(A); Labor Code 21.115, .122*
Limited Exception — Bona Fide Job Qualification	A district may take employment actions based on religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. *42 U.S.C. 2000e-2(e); 29 U.S.C. 623(f); Labor Code 21.119*
Racial Discrimination	The prohibition against discrimination because of race or on the basis of race includes discrimination because of or on the basis of an employee's hair texture or protective hairstyle commonly or historically associated with race. A district commits an unlawful employment practice if the district adopts or enforces a dress or grooming policy that discriminates against a hair texture or protective hairstyle commonly or historically associated with race. "Protective hairstyle" includes braids, locks, and twists. *Labor Code 21.1095*
Religious Discrimination	The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless a district demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to the district's business. "Undue hardship" means more than a *de*

	minimus (minimal) cost. *42 U.S.C. 2000e(j); 29 C.F.R. 1605.2; Labor Code 21.108*
Burden on Free Exercise	A district may not substantially burden an employee's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003*
Unlawful Inquiry into Religious Affiliation	A person employed or maintained to obtain or aid in obtaining positions for public school employees may not directly or indirectly ask about, orally or in writing, the religion or religious affiliation of anyone applying for employment in a public school of this state. A violation of this provision is a Class B misdemeanor. A person who violates this provision is subject to civil penalties. *Education Code 22.901*
Sex Discrimination	The prohibition against discrimination because of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. A district shall treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees for all employment-related purposes, including receipt of benefits under fringe benefit programs. *42 U.S.C. 2000e(k); 29 C.F.R. 1604.10; Labor Code 21.106*
Pregnancy	
Gay and Transgender	The prohibition against discrimination because of sex includes discrimination on the basis of an individual being gay or transgender. *Bostock v. Clayton County, Georgia, 140 S. Ct. 1731 (2020)*
Gender Stereotypes	A district may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. *Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)*
Equal Pay	A district may not pay an employee at a rate less than the rate the district pays employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort, or responsibility and which are performed under similar working conditions. This rule does not apply if the payment is pursuant to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. *29 U.S.C. 206(d) (Equal Pay Act); 34 C.F.R. 106.54 (Title IX)*
Age Discrimination	The prohibition against discrimination on the basis of age applies only to discrimination against an individual 40 years of age or older. *29 U.S.C. 631; Labor Code 21.101*
Bona Fide Employee Benefit Plan	A district may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee benefit plan. However, a bona fide employee benefit plan shall not excuse the failure to hire any individual and no such benefit plan shall

require or permit the involuntary retirement of any individual because of age. *29 U.S.C. 623(f); Labor Code 21.102*

Disability Discrimination

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

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

Discrimination Based on Lack of Disability

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

Definition of Disability

"Disability" means:

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

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

"Regarded as" Having an Impairment

An individual meets the requirement of being "regarded as" having an impairment if the individual establishes that he or she has been subjected to an action prohibited by the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

Transitory and Minor

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

Mitigating Measures

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices, prosthetics, hearing aids, mobility de-

vices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

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

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

Other Definitions

“Physical or mental impairment” means:

Physical or Mental Impairment

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

2. Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. 1630.2(h)

Major Life Activities

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

“Major life activities” also include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within the body system.

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

Qualified Individual

“Qualified individual” means an individual who:

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires; and

2. With or without reasonable accommodation, can perform the essential functions of such position. Consideration shall be given to a district's judgment as to what functions of a job are essential. A written job description prepared before advertising or interviewing applicants for the job is evidence of the job's essential functions.

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

Reasonable Accommodations

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

"Reasonable accommodation" includes:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

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

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

Discrimination Based on Relationship

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

Illegal Drugs and Alcohol

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

Drug Testing	A district is not prohibited from conducting drug testing of employees and applicants for the illegal use of drugs or making employment decisions based on the results of such tests. *42 U.S.C. 12114(c), (d); Labor Code 21.002(6)(A)* [See DHE]
Alcohol Use	The term "qualified individual with a disability" does not include an individual who is an alcoholic and whose current use of alcohol prevents the employee from performing the duties of his or her job or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others. *42 U.S.C. 12114(a); 29 U.S.C. 705(20)(C); 29 C.F.R. 1630.3(a); 28 C.F.R. 35.104; Labor Code 21.002(6)(A)*
Qualification Standards	It is unlawful for a district to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the district, is shown to be job related for the position in question and is consistent with business necessity. *29 C.F.R. 1630.10(a)*
Direct Threat to Health or Safety	As a qualification standard, a district may require that an individual not pose a direct threat to the health or safety of other individuals in the workplace. "Direct threat" means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. *42 U.S.C. 12111(3); 29 C.F.R. 1630.2(r); Labor Code 21.002(6)(B)*
Vision Standards and Tests	A district shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the district, is shown to be job-related for the position in question and consistent with business necessity. *42 U.S.C. 12113(c); 29 C.F.R. 1630.10(b); Labor Code 21.115(b)*
Communicable Diseases	A district may refuse to assign or continue to assign an individual to a job involving food handling if the individual has an infectious or communicable disease that is transmitted to others through handling of food. *42 U.S.C. 12113(e); 29 U.S.C. 705(20)(D); 29 C.F.R. 1630.16(e); Labor Code 21.002(6)(B)*
Service Animals	A district that is subject to the jurisdiction of Title I of the ADA (employment discrimination) or to Section 504 of the Rehabilitation Act (employment discrimination) shall comply with the reasonable accommodation requirements of those laws with respect to service animals. [See Reasonable Accommodations, above] A district that is not subject to either Title I or Section 504 shall comply with Title II of the ADA (discrimination by public entity). An

employer that is subject to Title II shall comply with 28 C.F.R. Part 35, including the requirements relating to service animals at 28 C.F.R. 35.136 [see FBA]. *28 C.F.R. 35.140*

Genetic Information Nondiscrimination Act

For the purpose of compliance with the Genetic Information Nondiscrimination Act (GINA), see 29 C.F.R. 1635.3(c) for the definition of "genetic information."

Definitions

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

29 C.F.R. 1635.3(c)

[For the definition of "genetic tests" under GINA, see 29 C.F.R. 1635.3(f).]

A test for the presence of alcohol or illegal drugs is not a genetic test. However, a test to determine whether an individual has a genetic predisposition for alcoholism or drug use is a genetic test. *29 C.F.R. 1635.3(f)*

Prohibited Practices

Discrimination

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

Acquisition

Except as set forth below or otherwise provided in the GINA regulations, a district shall not request, require, or purchase genetic information of an individual or family member of the individual. *42 U.S.C. 2000ff-1(b); 29 C.F.R. 1635.8(a)*

"Request" includes:

1. Conducting an internet search on an individual in a way that is likely to result in a district's obtaining genetic information;
2. Actively listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information; and
3. Making requests for information about an individual's current health status in a way that is likely to result in a district's obtaining genetic information.

29 C.F.R. 1635.8(a)

Disclosure

A district that possesses genetic information, regardless of how the district obtained the information, shall not disclose the information

except as set forth in the GINA regulations. *29 C.F.R. 1635.9(b)* [See Confidentiality, below]

Manifested Condition

A district shall not be considered to be in violation of the GINA regulations based on the use, acquisition, or disclosure of medical information about a manifested disease, disorder, or pathological condition of an employee or member, even if the disease, disorder, or pathological condition has or may have a genetic basis or component. However, genetic information about a manifested disease, disorder, or pathological condition is subject to the requirements and prohibitions of GINA. *29 C.F.R. 1635.12.*

[For additional information about manifested disease, see 29 C.F.R. 1653.3(g).]

Inadvertent Acquisition

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

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

29 C.F.R. 1635.8(b)(1)(ii)

Exceptions

Leave Requests

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the district requests family medical history to comply with the certification provisions or the

Family and Medical Leave Act (FMLA) or state or local family and medical leave laws, or pursuant to a policy (even in the absence of requirements of federal, state, or local leave laws) that permits the use of leave to care for a sick family member and that requires all employees to provide information about the health condition of the family member to substantiate the need for leave. *29 C.F.R. 1635.8(b)(3)*

[For additional exceptions to the general prohibition against requesting, requiring, or purchasing genetic information, see 29 C.F.R. 1635.8(b)(2)-(5).]

Requests for Medical Information

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

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

1. Requests for documentation to support a request for reasonable accommodation under federal, state, or local law;
2. Requests for medical information as required, authorized, or permitted by federal, state, or local law, such as where an employee requests leave under the FMLA to attend to the employee's own serious health condition or where an employee complies with the FMLA's employee return to work certification requirements; or
3. Requests for documentation to support leave that is not governed by federal, state, or local laws requiring leave, as long as the documentation required to support the request otherwise complies with the requirements of the ADA and other laws limiting a district's access to medical information.

29 C.F.R. 1635.8(b)(1)(i)(D)

Safe Harbor

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

"The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for

medical in-formation. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

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

29 C.F.R. 1635.8(b)(1)(i)(B), (C)

Employment Examinations

The prohibition on acquisition of genetic information applies to medical examinations related to employment. A district shall tell health-care providers not to collect genetic information, including family medical history, as part of a medical examination intended to determine the ability to perform a job.

Remedial Measures

A district shall take additional reasonable measures within its control if it learns that genetic information is being requested or required in medical examinations related to employment. Such reasonable measures may depend on the facts and circumstances under which a request for genetic information was made, and may include no longer using the services of a health-care professional who continues to request or require genetic information during medical examinations after being informed not to do so.

29 C.F.R. 1635.8(d)

Confidentiality

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

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

definition, including genetic information requested, required, or purchased before November 21, 2009.

Genetic information that a district receives orally need not be reduced to writing but may not be disclosed, except as permitted by 29 C.F.R. part 1635.

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

29 C.F.R. 1635.9(a)

Disclosure Permitted

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

1. To the employee (or family member if the family member is receiving genetic services) about whom the information pertains upon receipt of the employee's written request;

2. To an occupational or other health researcher if the research is conducted in compliance with the regulations and protections at 45 C.F.R. part 46;

3. In response to an order of a court. The district may disclose only the genetic information expressly authorized by the order. If the order was secured without the knowledge of the employee to whom the information refers, the district shall inform the employee of the order and any genetic information that was disclosed pursuant to the order;

4. To government officials investigating compliance with Title II of GINA if the information is relevant to the investigation;

5. To the extent the information is disclosed in support of an employee's compliance with the certification provisions of the FMLA or certification requirements under state family and medical leave laws; or

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

29 C.F.R. 1635.9(b)

Relationship to HIPAA Privacy Regulations

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

Pregnant Workers Fairness Act

It is an unlawful employment practice for a district not to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity. *42 U.S.C. 2000gg-1(1); 29 C.F.R. 1636.3(a)*

Interactive Process

It is an unlawful employment practice for a district to require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process referred to in 42 U.S.C. 2000gg(7) and described in 29 C.F.R. 1636.3(k). *42 U.S.C. 2000gg-1(2); 29 C.F.R. 1636.4(b)*

Denial of Employment Opportunities

It is an unlawful employment practice for a district to deny employment opportunities to a qualified employee if such denial is based on the need, or potential need, of the covered entity to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of the qualified employee. *42 U.S.C. 2000gg-1(3); 29 C.F.R. 1636.4(c)*

Required Leave

It is an unlawful employment practice for a district to require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the qualified employee that does not result in an undue hardship for the covered entity; but nothing in this provision prohibits leave as a reasonable accommodation if that is the reasonable accommodation requested or selected by the employee, or if it is the only reasonable accommodation that does not cause an undue hardship. *42 U.S.C. 2000gg-1(4); 29 C.F.R. 1636.4(d)*

Adverse Action

It is an unlawful employment practice for a district to take adverse action in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee. *42 U.S.C. 2000gg-1(5); 29 C.F.R. 1636.4(e)*

Definitions

Known Limitation

“Known limitation” means physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee’s representative has

communicated to the district whether or not such condition meets the definition of disability specified in the ADA (42 U.S.C. 12102).

"Known," in terms of limitation, means the employee or the employee's representative has communicated the limitation to the employer.

"Limitation" means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, of the specific employee in question.

42 U.S.C. 2000gg(4); 29 C.F.R 1636.3(a)

Communicated to the Employer

"Communicated to the employer," with respect to a known limitation, means an employee or the employee's representative has made the employer aware of the limitation by communicating with a supervisor, a manager, someone who has supervisory authority for the employee or who regularly directs the employee's tasks (or the equivalent for an applicant), human resources personnel, or another appropriate official, or by following the steps in the district's policy to request an accommodation. The communication may be made orally, in writing, or by another effective means. The communication need not be in writing, be in a specific format, use specific words, or be on a specific form in order for it to be considered "communicated to the employer." *29 C.F.R. 1636.3(d)*

Consideration of Mitigating Measures

The determination of whether an employee has a limitation shall be made without regard to the ameliorative effects of mitigating measures. The non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an employee has a limitation. *29 C.F.R. 1636.3(e)*

Qualified Employee

The term 'qualified employee' means an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position, except that an employee or applicant shall be considered qualified if:

1. Any inability to perform an essential function is for a temporary period, where "temporary" means lasting for a limited time, not permanent, and may extend beyond ''in the near future."

2. The essential function(s) could be performed in the near future. This determination is made on a case-by-case basis. If the employee is pregnant, it is presumed that the employee could perform the essential function(s) in the near future because they could perform the essential function(s) within generally 40 weeks of its suspension.

3. The inability to perform the essential function(s) can be reasonably accommodated. This may be accomplished by temporary suspension of the essential function(s) and the employee performing the remaining functions of their position or, depending on the position, other arrangements, including, but not limited to: the employee performing the remaining functions of their position and other functions assigned by the covered entity; the employee performing the functions of a different job to which the covered entity temporarily transfers or assigns the employee; or the employee being assigned to light duty or modified duty or participating in the covered entity's light or modified duty program.

42 U.S.C. 2000gg(6); 29 C.F.R. 1636.3(f)

Exception

An employee with known limitations related to pregnancy, childbirth, or related medical conditions is not required to accept an accommodation. However, if such employee rejects a reasonable accommodation that is necessary to enable the employee to perform an essential function of the position held or desired or to apply for the position, or rejects temporary suspension of an essential function if the employee is qualified under 29 C.F.R. 1636.3(f)(2), and, as a result of that rejection, cannot perform an essential function of the position, or cannot apply, the employee will not be considered "qualified." *29 C.F.R. 1636.3(a)(2)*

Reasonable Accommodation

With respect to an employee or applicant with a known limitation under the PWFA, reasonable accommodation includes:

1. Modifications or adjustments to a job application process that enable a qualified application with a known limitation under the PWFA to be considered for the position such qualified applicant desires;

2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified employee with a known limitation under the PWFA to perform the essential functions of the position;

3. Modifications or adjustments that enable a district's employee with a known limitation under the PWFA to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without known limitations; or

4. Temporary suspension of essential functions and/or modifications or adjustments that permit the temporary suspension of essential functions.

42 U.S.C. 2000gg(7); 29 C.F.R. 1636.3(h)

Unnecessary Delay

An unnecessary delay in providing a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee may result in a violation of the PWFA even if the covered entity eventually provides the reasonable accommodation. In determining whether there has been an unnecessary delay, factors to be considered are described in 29 C.F.R. 1636.4(a)(1)(i)-(vii). *29 C.F.R. 1636.4(a)(1)*

Undue Hardship

Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the following factors:

1. The nature and net cost of the accommodation needed under the PWFA;
2. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;
3. The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type, and location of its facilities;
4. The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and
5. The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

42 U.S.C. 2000gg(7); 29 C.F.R. 1636.3(j)

Temporary Suspension of an Essential Function

If an employee with a known limitation under the PWFA meets the definition of ''qualified employee'' under this provision and needs one or more essential functions of the relevant position to be temporarily suspended, the covered entity must provide the accommodation unless doing so would impose an undue hardship on the covered entity when considered in light of the factors provided in 29 C.F.R. 1636.3(j)(2)(i) through (v) of this provision as well as the factors described in 29 C.F.R. 1636.3(j)(3)(i)-(vi). *29 C.F.R. 1636.3(j)(3)*

Predictable Assessments

The individualized assessment of whether a modification listed in 29 C.F.R. 1636.3(j)(4)(i) through (iv) of this provision is a reasonable accommodation that would cause undue hardship will, in virtually all cases, result in a determination that the four modifications are reasonable accommodations that will not impose an undue hardship under the PWFA when they are requested as workplace accommodations by an employee who is pregnant. Therefore, with respect to these modifications, the individualized assessment should be particularly simple and straightforward:

1. Allowing an employee to carry or keep water near and drink, as needed;
2. Allowing an employee to take additional restroom breaks, as needed;
3. Allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
4. Allowing an employee to take breaks to eat and drink, as needed.

29 C.F.R. 1636.3(j)(4)

Other Forms of Discrimination

Military Service

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

Bankruptcy Discrimination

A district may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under federal bankruptcy laws, solely because the bankrupt or debtor is or has been a debtor under federal bankruptcy laws; was insolvent before the commencement of a bankruptcy case or during the case but before the debtor was granted or denied a discharge; or has not paid a debt that is dischargeable in the bankruptcy case or that was discharged under the bankruptcy laws. *11 U.S.C. 525(a)*

Student Loan Repayment

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

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

Occupations Code 56.001, .003

Harassment-Free Workplace

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

Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

29 C.F.R. 1604.11(a), (g); Labor Code 21.141

An employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors know or should have known that the conduct constituting sexual harassment was occurring and fail to take immediate and appropriate corrective action. *Labor Code 21.142; 40 TAC 819.12(k)*

Same-Sex Harassment

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

Criminal Offense — Official Oppression

A public servant acting under color of the public servant's office or employment commits an offense if the public servant intentionally subjects another to sexual harassment.

A public servant acts under color of the public servant's office or employment if the person acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

Penal Code 39.03(a)(3), (b), (c)

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*

Prohibition on Use of Public Funds

A district may not use public money to settle or otherwise pay a sexual harassment claim made against a person who is an elected or appointed member of the board or an officer or employee of the district. *Local Gov't Code 180.009*

National Origin Harassment

Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitute harassment when this 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.

29 C.F.R. 1606.8(b)

Severe and Pervasive

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)*

Prevention

A district should take all steps necessary to prevent unlawful harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate penalties, informing employees of their right to raise and how to raise the is-

sue of harassment under Title VII, and developing methods to sensitize all concerned. *29 C.F.R. 1604.11(f)*

Responsibility for Harassment by Third Parties

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

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

1. That the district exercised reasonable care to prevent and promptly correct any harassing behavior; and
2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

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

Prohibition on Retaliation

A district may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. *29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 42 U.S.C. 12203 (ADA); 42 U.S.C. 2000ff-6(f) (GINA); 42 U.S.C. 2000gg-2(f) (PWFA); Labor Code 21.055; 40 TAC 819.12(e)*

Notices

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

Section 504 Notice

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

The notice shall state:

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

Methods of notification may include:

1. Posting of notices;

2. Publication in newspapers and magazines;

3. Placing notices in district publications; and

4. Distributing memoranda or other written communications.

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

34 C.F.R. 104.8

Employment Postings

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

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) of 1990 is a federal anti-discrimination statute designed to remove barriers that prevent qualified individuals with disabilities from having the same employment opportunities as persons without disabilities. The ADA requires employers to provide reasonable accommodation(s) for qualified employees with disabilities.

Definitions

The following definitions are provided to aid in the understanding of ADA procedures:

Disability

The ADA defines a disability as a physical or mental impairment that substantially limits one or more major life activities.

Qualified Employee with a Disability

A qualified employee with a disability is one who possesses the necessary skills, experience, education, and other job-related requirements, and can perform the essential functions of their job with or without reasonable accommodation.

Essential Functions of a Job

The essential functions of a job are the fundamental job duties of the position the employee with a disability holds or desires. Essential functions of a job must be performed by employees in the position and may be the reason the job exists.

Reasonable Accommodation

A reasonable accommodation is any modification to a job that makes it possible for an employee with a disability to continue performing the essential functions of the job. The accommodation must be effective in reducing barriers to equal employment opportunities and must be work related. A reasonable accommodation does not have to be the best available as long as it is effective and does not pose an undue hardship to the District.

Undue Hardship

An undue hardship is an action that requires significant difficulty or expense in relation to the District's available resources and daily operations.

Compliance

It is the policy of the Houston Independent School District (HISD) to provide reasonable accommodation(s) for qualified employees with disabilities. [See DAA(LEGAL) and DBB(LEGAL)]

Requesting Accommodations under the ADA

The employee is responsible for submitting the ADA Accommodation Request Form and all medical documentation to the District's ADA coordinator. [See DIA(EXHIBIT) and the *Americans with Disabilities Act Accommodation Request Form*]

The ADA coordinator will, in consultation with employee's workplace supervisor, review and determine if accommodation is needed and can be provided within the District's constraints.

Noncompliance	Complaints regarding allegations of noncompliance with the ADA will be directed to the Employee Relations department for investigation. [See DIA1(REGULATION)]
Responses to ADA Accommodation Requests	The ADA coordinator will provide the employee and the workplace supervisor with an official ADA response letter and retain a file copy.
Maintenance Responsibility	The Chief Human Resources Officer is responsible for maintenance of this regulation.
Effective Date	This regulation shall be effective as of the adoption date, May 30, 2025.

Criminal History Reviews

Definitions

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

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

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

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

Participation in the Criminal History Clearinghouse

The purpose of the clearinghouse is to:

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

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

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

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

Districts shall maintain compliance with the FBI Criminal Justice Information Services Security Policy. Districts shall allow DPS and the FBI to conduct audits of their clearinghouse accounts to pre-

vent any unauthorized access, use, or dissemination of the information.

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

Districts of Innovation

A prohibition, restriction, or requirement imposed by Education Code Chapter 22, Subchapter C (Criminal History Records) on an open-enrollment charter school applies to the same extent to a district of innovation or other charter entity.

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

Education Code 22.0815

Certified Educators

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

Noncertified Employees

Applicability

A person who is not an applicant for or holder of a certificate from SBEC and who was offered employment by a district on or after January 1, 2008, must submit to a NCHRI review before being employed. *Education Code 22.08339(a), (b)*

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

Information to DPS and TEA

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

A district shall provide the Texas Education Agency (TEA) with the name of a noncertified employee. TEA shall examine the CHRI of the person and notify the district if the person may not be hired or must be discharged under Education Code 22A.157.

Education Code 22.0833(c), (g)

Employment Pending Review

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment. *19 TAC 153.1109(d)(2)*

Clearinghouse

A district shall obtain all CHRI that relates to a noncertified employee through the clearinghouse and shall subscribe to the CHRI

of that person. A district may require the person to pay any fees related to obtaining the CHRI. *Education Code 22.0833(e), (f)*

Substitute Teachers

For purposes of the CHRI review requirements, a "substitute teacher" is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

Information to DPS and TEA

A district shall send or ensure that a substitute teacher sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

A district shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the district if the person:

1. May not be hired or must be discharged as provided by Education Code 22A.157; or
2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

Employment Pending Review

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

Clearinghouse

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

Education Code 22.0836; 19 TAC 153.1101(5), .1111(d)

Student Teachers

A district shall obtain from DPS and may obtain from any other law enforcement or criminal justice agency or a private consumer reporting agency, all CHRI that relates to a person participating in an internship consisting of student teaching to receive a teaching certificate.

A person may not perform any student teaching until:

1. The person provides to the district a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government; and
2. The district obtains CHRI, as described above.

A district may require a student teacher to pay any costs related to obtaining the CHRI.

Education Code 22.0835(a), (c), (d), (g)

All Other Employees

A district shall obtain CHRI that relates to an employee who is not subject to an NCHRI review from:

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

Education Code 22.083(a), (a-1)

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

Confidentiality of CHRI

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

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

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

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

NCHRI obtained from the FBI may be released or disclosed only to a governmental entity or as authorized by federal law and regulations, federal executive orders, and federal policy.

Gov’t Code 411.084

Unauthorized Disclosure of CHRI

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

1. Obtains CHRI in an unauthorized manner, uses the information for an unauthorized purpose, or discloses the information to a person who is not entitled to the information; or

2. Violates a DPS rule adopted under Government Code Chapter 411, Subchapter F.

A person commits a second degree felony if the person:

1. Obtains, uses, or discloses CHRI for remuneration or for the promise of remuneration; or

2. Employs another person to obtain, use, or disclose CHRI for remuneration or for the promise of remuneration.

Gov't Code 411.085

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

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

A district is not prohibited from disclosing CHRI obtained from DPS in a criminal proceeding or in a hearing conducted by TEA or SBEC.

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

Destruction of CHRI

A district or an entity that contracts to provide services to a district, shall destroy CHRI that is obtained under Government Code 411.097 after the information is used for its authorized purpose. *Gov't Code 411.097(h)*

Confidentiality of Information Obtained from Applicant or Employee

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

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);

2. By court order; or

3. With the consent of the person who is the subject of the information.

In addition, the information is not subject to disclosure under Government Code Chapter 552.

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

Education Code 22.08391

Refusal to Hire Convicted Applicants

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

1. Convicted of or placed on deferred adjudication community supervision for:
    a. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62;
    b. An offense under Penal Code 21.12, Improper Relationship Between an Educator and a Student, or Penal Code 43.24, Sale, Distribution, or Display of Harmful Material to a Minor;
    c. A felony offense under Penal Code Chapter 43, Public Indecency;
    d. A felony offense involving school property; or
    e. An offense under the laws of another state or federal law that is equivalent to items a, b, c, or d; or
2. Convicted of:
    a. A felony under Title 5, Penal Code; or
    b. An offense under the laws of another state or federal law that is equivalent to an offense under item 2a, above.

Exception

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

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

Education Code 22A.157(a)-(b); 22A.201(a) [See DF for provisions on discharge of convicted employees.]

Certification to Commissioner

Each school year, the superintendent shall certify to the commissioner that the district has complied with the above provisions. *Education Code 22A.157(f)*

Sanctions

SBEC may impose a sanction on an educator who does not refuse to hire an employee if the educator knows or should have known, through a criminal history record information review, that the employee has criminal history described at Refusal to Hire Convicted Applicants, above. *Education Code 22A.157(e)*

SBEC may impose a sanction on an educator who does not refuse to hire an applicant when the applicant was employed in a public school and on the registry [see Do Not Hire Registry, below], fails to comply with Education Code 22A.055(e) [see Pre-employment Affidavit, below], or knew or should have known, through a CHRI review, that the applicant has been convicted of or placed on deferred adjudication community supervision for an offense under Education Code 22A.157 [see Refusal to Hire Convicted Applicants, above]. *19 TAC 249.15(b)(12)*

SBEC may impose a sanction on a superintendent who falsely or inaccurately certified to the commissioner that the district had complied with Education Code 22A.057. [See Certification to Commissioner, above] *19 TAC 249.15(b)(14)*

Termination for Failure to Disclose

A district may discharge an employee if the district obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to the district. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation). *Education Code 22A.157(d)* [See DF]

Consent for Release of Records and Pre-employment Affidavit

A person applying for employment with a school district must submit, using a form adopted by TEA, consent for release of the person's employment records and a pre-employment affidavit disclosing whether the person has ever been:

Disclosures Required

1. Investigated by a licensing authority or had a license, certificate, or permit denied, suspended, revoked, or subject to another sanction in this state or another state for conduct described by Education Code 22A.051(a)(2)(A), (B), (C), or (D) [see DHB and DHC];
2. Investigated by a law enforcement or child protective services agency for, or charged with, adjudicated for, or convicted of, an offense involving conduct described by Education Code 22A.051(a)(2)(A), (B), (C), or (D) [see DHB and DHC];
3. Included in the registry [see Do Not Hire Registry, below];
4. Employed or is currently employed by or has acted or is currently acting as a service provider for a public or private school; or

5. Terminated or discharged or has resigned, in lieu of being terminated or discharged, from a public or private school.

Education Code 22A.055(a)

A person who answers affirmatively concerning a required disclosure, above, must disclose in the affidavit all relevant facts known to the person pertaining to the matter, including, if applicable to the action, whether the allegation was determined to be true or false.

Continued Employment After Disclosure

A person is not precluded from being employed based on a disclosed allegation if the district determines based on the information disclosed in the affidavit that the allegation was false.

A determination that an employee failed to disclose information required to be disclosed by a person is grounds for termination of employment.

A district shall discharge or refuse to hire a person against whom a determination of failure to disclose information has been made.

Sanctions Relating to Failure to Disclose Information

SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed a person despite being aware that the person knowingly failed to disclose information.

A person commits an offense if the person fails to disclose information. An offense under this subsection is a Class B misdemeanor.

Education Code 22A.055(b)-(g)

Do Not Hire Registry

"Registry" means the registry of persons who are not eligible to be employed by or act as a service provider for an educational entity maintained under Education Code 22A.151. *Education Code 22A.001(7)*

Internet Portal

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

1. The registry of persons who are not eligible to be employed in public schools; and

2. Information indicating that a person is under investigation.

Education Code 22A.155

Registry of Persons Not Eligible for Employment

TEA shall maintain and make available through its internet portal a registry of persons who are not eligible to be employed by a district.

A district shall discharge or refuse to hire or terminate a person listed on the registry.

The registry must list the following persons as not eligible to be employed by a district:

1. An employee of an open enrollment charter school determined by TEA under Education Code 22.0832 as a person who would not be eligible for educator certification based on their NCHRI;
2. A noncertified person determined by TEA to be not eligible for employment based on the person's CHRI, as provided by Education Code 22.0833 [see DBAA];
3. A person who is not eligible for employment based on CHRI received by TEA under Education Code 22A.201(b);
4. A person whose certification or permit, or application for a certification or permit, is denied or revoked by SBEC and who has not been issued a certificate or permit subsequent to that denial or revocation [see DHB];
5. A person whose certification or permit is suspended by SBEC for a reason besides Education Code 21.105(c), 21.160(c), or 21.210(c) (abandonment of contract) for the period of suspension;
6. A noncertified person who is determined by the commissioner under Education Code 22A.101 to have engaged in misconduct described by Education Code 22A.051(a)(2)(A), (B), (C), or (D) [see DHC]; and
7. A person temporarily included in the registry under Education Code 22A.051 or 22A.153 [see Temporary Inclusion in Registry, below] for the term of the placement.

The registry must include information indicating whether a person's listing in the registry expires. A prohibition applicable to a person included in the registry no longer applies to a person whose listing in the registry has expired, and, if applicable, whose certification or permit was reinstated.

The superintendent shall annually certify to the commissioner that the district has complied with these requirements.

Education Code 22A.151

Temporary Inclusion in Registry

The commissioner shall temporarily include a person in the registry if the commissioner determines that the person's continued employment at a district constitutes a continuing and imminent threat

to public welfare or if a person is arrested for an offense under Education Code 22A.201(a), a person not eligible for district employment [see Refusal to Hire Convicted Applicants, above]. *Education Code 22A.152-.153*

Commercial Driver License Drug and Alcohol Clearinghouse

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

Pre-employment Query Required

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

Annual Query Required

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

Prohibition

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

Recordkeeping Required

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

49 C.F.R. 382.701

Consumer Credit Reports

Definitions

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

"Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person's eligibility for employment.

"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on con-

sumers for the purpose of furnishing consumer reports to third parties.

"Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

15 U.S.C. 1681a

Obtaining Reports

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

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

Adverse Action

Before taking any adverse action based on the consumer report, a district shall provide the applicant or employee a copy of the consumer report and a written description of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

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

Disposal of Records

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

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

Examples of reasonable measures include:

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

16 C.F.R. 682.3

Disqualifying Offenses

The District shall obtain criminal history record information on final candidates for employment and all current employees by notification from Department of Public Safety, Federal Bureau of Investigation, self-disclosures, and/or from the public. All District positions have the potential for contact with students. The District shall disqualify from employment a person whose criminal history indicates that the person poses a threat to students or employees. Consistent with business necessity, the District shall also disqualify from employment a person whose criminal history is otherwise inconsistent with the job duties of the position for which the person is being considered.

Individualized Assessment

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

- The nature of the offense;
- The age of the person when the crime was committed;
- The date of the offense and how much time has elapsed;
- The adjudication of the offense (e.g., whether the person was found guilty by a trier of fact, pled guilty, entered a no contest plea, or received deferred adjudication);
- The nature and responsibilities of the job sought;
- The accuracy of the person's disclosure of their criminal history during the selection process;
- The effect of the conduct on the overall educational environment;
- Whether the offense under the current penal code would be the same degree of offense;
- Any further information provided by the person concerning their criminal history record; and
- Any other information obtained by the District regarding the applicant's/employee's criminal history record.

Arrests

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

Credit History

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

Offenses for Which Exclusion Is Likely

A record of certain offenses carries a high likelihood that the District will exclude the individual from employment.

Title V, Texas Penal Code

Persons whose criminal history record shows convictions or pleas of guilty or nolo contendere for offenses under Title V, Texas Penal Code, and specifically offenses requiring registration as a sex offender, (or equivalent offenses under the laws of other states and federal law), and at the time the offenses occurred, the victim of the offense was under 18 years of age or was enrolled in a public school, are presumptively disqualified from employment with the District. Subject to an individualized assessment, the following offenses will likely preclude employment with the District. These offenses include but are not limited to:

- Murder;
- Capital murder;
- Manslaughter;
- Criminally negligent homicide;
- Kidnapping;
- Aggravated kidnapping;
- Smuggling of persons;
- Trafficking of persons;
- Continuous trafficking of persons;
- Continuous sexual abuse of young child or children;
- Indecency with a child;
- Improper relationship between educator and student;
- Sexual assault;
- Aggravated assault;
- Injury to a child, elderly individual, or disabled individual; and
- Abandoning or endangering a child.

Non-Title V, Texas Penal Code	Subject to an individualized assessment, the following non-Title V, Texas Penal Code offenses are also presumptively disqualifying for persons whose criminal history record shows convictions or pleas of guilty or nolo contendere: • Aggravated robbery; • Any felony where a deadly weapon was used or exhibited; and • Any felony related to the manufacture, delivery, or possession of marijuana, a controlled substance, or a dangerous drug, except that any person charged and convicted of felony possession of marijuana, which under current law would be a misdemeanor, shall be considered to have a misdemeanor conviction under this policy.

School Bus Drivers

A person shall not drive a school bus, school activity bus, or multifunction school activity bus unless he or she is physically qualified to do so. Each school bus driver shall undergo and successfully complete an annual physical examination in accordance with the requirements of 49 C.F.R. 391.41 and 391.43, which list those physical and mental conditions for which the medical examiner is directed to disqualify an applicant. A driver shall not operate a school bus, school activity bus, or multifunction school activity bus unless he or she has in his or her possession the original, or photographic copy, of the medical examiner's certificate stating that the driver is physically qualified to drive a school bus, school activity bus, or multifunction school activity bus. *Transp. Code 521.022; 37 TAC 14.12*

A person disqualified on the basis of the medical examination may request special consideration in accordance with 37 Administrative Code 14.13.

Definitions

The definitions related to individuals with disabilities and exceptions to those definitions included in policy DAA shall be used in applying and interpreting this policy and any local policy adopted in conjunction with this policy.

Bloodborne Pathogen Control

A district that employs employees who provide services in a public or private facility providing health care-related services, or who otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps shall comply with the minimum standards set by the Texas Department of State Health Services (TDSHS). This includes a district that operates a public school health clinic.

"Sharp" Defined

A "sharp" is an object used or encountered in a health-care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur.

Exposure Control Plan

The TDSHS has developed an exposure control plan as a model plan to achieve the minimum standards in Health and Safety Code 81.304. The plan is designed to minimize exposure of employees to bloodborne pathogens and includes policies relating to occupational exposure to bloodborne pathogens, training and educational requirements for employees, measures to increase vaccination of employees, and increased use of personnel protective equipment by employees.

The TDSHS Bloodborne Pathogens Exposure Control Plan requires a district to:

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

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

Cost of Testing

If certified emergency medical services personnel, an emergency response employee or volunteer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital is accidentally exposed to blood or other body fluids of a patient, the hospital to which the patient is transported shall take reasonable steps to test the patient for hepatitis B, hepatitis C, HIV, or any reportable disease. A district that employs the person, or for which the person works as a volunteer in connection with rendering the assistance, is responsible for paying the costs of the test. *Health and Safety Code 81.095(b)*

Genetic Information

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

Pre-employment Inquiries and Employment Entrance Examinations

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

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

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

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

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

Confidentiality

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

Examination During Employment

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

Placement on Temporary Disability

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

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

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

Examinations during Employment

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

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

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

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

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

[See DAA for information on disabilities and reasonable accommodation.]

Placement on Temporary Disability

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

At Employee's Request

By Board Authority

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

terferes with the performance of regular duties. [For employees who are eligible for temporary disability leave, see DEC(LOCAL).]

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

Other Requirements

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

Effective Date

This policy shall be effective as of the adoption date, May 11, 2018.

EMPLOYEE WITH HIV

1. For the purposes of this regulation, the term human immunodeficiency virus (HIV) infection is used to refer to acquired immune deficiency syndrome (AIDS), AIDS-related Complex, and HTLV-III infection, as well as HIV infection.

PRIVACY ISSUES REGARDING TEST RESULTS

2. The right to privacy of the individual should be respected. All employees of the District are advised that state law defines test result to mean any statement or assertion that any identifiable individual is positive; negative; at risk; has or does not have a certain level of antigen or antibody; or has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. See Reference (t). State law also provides that a test result is confidential. See Reference (t). Any person, firm, corporation, physician, hospital, blood center, blood bank, laboratory, or other entity that possesses or has knowledge of the test result will not release or disclose a test result or allow a test result to become known.

   A test result may be released to a local health authority if reporting is required under Reference (s). With regard to the District, the Superintendent or the director, Health and Medical Services, will notify the local health authority when HIV infection of an employee is known or suspected and provide all information known concerning any person who has or is suspected of having HIV infection.

   A test result can be released to physicians, nurses, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the employee's health and welfare. The director, Health and Medical Services, will seek permission to disclose the information to persons who have a need to know. See Reference (q).

   A test result may be released if the employee or person legally authorized to give consent for the employee voluntarily releases or discloses the test result or authorizes the release or disclosure of the test result. The authorization must be in writing and signed by the employee or person legally authorized to give consent for the employee. The authorization also must state the persons, entities, or classification of persons or entities to which test results may be released or disclosed.

PRACTICE REGARDING ABSENCES

3. An immunodeficient employee may need to be absent for his or her own protection when cases of acute or short-term communicable diseases such as measles or chicken pox occur in the workplace. Routine and standard procedures

should be used in such cases. See References (c), (d), (g) and (h).

PRACTICE REGARDING EMPLOYEE FITNESS

4. Routine and standard procedures should be used if there is a question of whether or not the employee is physically or emotionally capable of performing his or her duties as an employee of the District. See References (a), (b), and (i).

PRACTICE REGARDING INVOLUNTARY TRANSFERS

5. Routine and standard procedures should be used with the employee if there is a question of disruption of the efficient operation of the District necessitating an involuntary transfer. See References (i), (l), and (p).

PRACTICE REGARDING VOLUNTARY TRANSFERS

6. Routine and standard procedures should be used if an employee with HIV infection requests a voluntary transfer. See References (b), (i), (l), (m), (n), (o), and (p).

CONTESTING DECISIONS

7. If an employee with HIV infection wishes to contest decisions made with regard to employment, any such appeal will be in accordance with District practice. See References (e), (f), (j), and (k).

CONSULTATION

8. This regulation has been through consultation (Administrative: April 8, 2003; Instructional: April 3, 2003; Noninstructional: April 8, 2003).

MAINTENANCE RESPONSIBILITY

9. The executive deputy superintendent, School Support Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DBB(LEGAL)

(b) Board Policy DBB(LOCAL)

(c) Board Policy DEC(LEGAL)

(d) Board Policy DEC(LOCAL)

(e) Board Policy DGBA(LEGAL)

(f) Board Policy DGBA(LOCAL)

(g) Board Policy FFAD(LEGAL)

(h) Board Policy FFAD(LOCAL)

(i) DC3(REGULATION)

(j) DCD1(REGULATION)

(k) DEC8(REGULATION)

(l) DK3(REGULATION)

(m) DK4(REGULATION)

(n) DK5(REGULATION)

(o) DK6(REGULATION)

(p) DK7(REGULATION)

(q) DBB(EXHIBIT)

(r) Communicable Disease Prevention and Control Act

(s) Communicable Disease Prevention and Control Act §9.01

(t) Communicable Disease Prevention and Control Act §9.03

MEDICAL EXAMINATION

1. The District may require a medical evaluation of any employee who is experiencing physical and or emotional problems that interfere with job performance, may pose a threat to the health or safety of the employee or others, or may result in damage to District property. See References (a), (b), (c), and (d).

MEDICAL REFERRAL REQUEST PROCEDURES

2. When the principal or work location supervisor believes it is appropriate to refer an employee for a medical evaluation, the following procedures should be followed:

CONFERENCE

a. The principal or work location supervisor meets with the employee to share concerns regarding the employee's behavior, inform the employee that a referral for a medical evaluation through Health and Medical Services is being considered, and provide an opportunity for the employee to respond.

CONFERENCE SUMMARY

b. The principal or work location supervisor provides the employee a written summary of the conference and, if appropriate, informs the employee that approval for a medical evaluation conducted through Health and Medical Services will be requested from the District, assistant, associate, or deputy superintendent, or senior level manager.

RECOMMENDATION MEMORANDUM

c. The principal or work location supervisor prepares a memorandum addressed to Health and Medical Services requesting a medical evaluation of the employee. The memorandum must contain an approval signature line for the appropriate District, assistant, associate, or deputy superintendent, or senior level manager. The conference summary (see CONFERENCE SUMMARY above) and any other relevant information shall be attached to the memorandum and forwarded to the appropriate District, assistant, associate, or deputy superintendent, or senior level manager.

APPROVAL

d. If the recommendation is approved, the District, assistant, associate, or deputy superintendent, or senior level manager signs the approval line and returns the memorandum and attachments to the referring principal or work location supervisor.

NOTICE TO EMPLOYEE

e. After the referral recommendation is approved, the principal or work location supervisor notifies the employee, in writing, that the medical referral has been approved, that he or she will be contacted by Health and Medical Services, and directs the employee to participate in all

scheduled appointments. Appointments are scheduled during working hours. See Exhibit (1).

NOTICE TO HEALTH AND MEDICAL SERVICES

f. The principal or work location supervisor forwards all items at CONFERENCE SUMMARY, RECOMMENDATION MEMORANDUM, and NOTICE TO EMPLOYEE above to Health and Medical Services.

MEDICAL EVALUATION

g. The director, Health and Medical Services, processes the medical evaluation referral, informs the principal or work location supervisor of scheduled and missed appointments, and forwards summary of doctor's report to the principal or work location supervisor with a copy to the appropriate District, assistant, associate, or deputy superintendent, or senior level manager.

AUTHORIZED TIME OFF

3. The principal or work location supervisor is authorized to code the employee's time as "off-campus duty" for two days: one day for the consultation with Health and Medical Services and one day for the medical evaluation.

CONSULTATION

4. This regulation has been through consultation (Administrative: June 8, 2004; Instructional: July 1, 2004; Noninstructional: July 1, 2004).

MAINTENANCE RESPONSIBILITY

5. The assistant superintendent, Student Support Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DAA(LEGAL)

(b) Board Policy DBB(LEGAL)

(c) Board Policy DBB(LOCAL)

(d) DC3(REGULATION)

EXHIBIT:

(1) Sample Notice to Employee of Approved Medical Evaluation Referral

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See the following exhibits:

Exhibit A: Approvals Concerning Release of Information Regarding Personnel with HIV Infection – 1 page

Exhibit B: Release of Information Regarding Personnel with HIV Infection – 1 page

EXHIBIT A

APPROVALS CONCERNING RELEASE OF INFORMATION
REGARDING PERSONNEL WITH HIV INFECTION

This exhibit concerns the release of information about an employee's AIDS or HIV test results or HIV status. This approval is exercised as needed.

REQUESTS

Responsible Party	Level of Authority	Requirements and Other Information
Director, Health and Medical Services	Authorization to release information regarding employee HIV status or AIDS or HIV test results	Requires written, signed authorization from the employee or person legally authorized to give consent for the employee. The authorization must include the persons, entities, or classification of persons or entities to whom test results may be released or disclosed. The Communicable Disease Prevention and Control Act may require reporting of test results to a local health authority. Practice regarding absences, employee fitness, involuntary and voluntary transfers, and contesting decisions should follow routine and standard administrative procedures.

1. References.

   DBB1(REGULATION)

2. The assistant superintendent, Student Support Services, is responsible for maintenance of this exhibit.

EXHIBIT B

RELEASE OF INFORMATION REGARDING PERSONNEL WITH HIV INFECTION

MEMORANDUM

DATE:

TO: Employee
School/Department

FROM: Principal/Supervisor
School/Department

SUBJECT: REQUEST FOR MEDICAL EVALUATION

As you recall, we discussed concerns about your health, which may be affecting your workplace performance. Please be reminded that I encouraged you to seek medical attention for the medical concerns expressed during our verbal conversation. Specifically, your health concerns include: (List concerns below)

-
-
-

My observations indicate behaviors that are affecting your job performance. I am directing you to participate in a medical evaluation through the Health and Medical Services Department to determine your fitness for duty. Continued physical and health problems in the workplace must be addressed before they are allowed to negatively impact student learning. You are hereby relieved of your _____ duties until a medical clearance is provided. Failure to participate in this evaluation may lead to disciplinary action, up to and including termination of your employment. The Health and Medical Services Director may be reached at (713) 349-7423. A copy of this letter will be forwarded to the director and she will contact you to schedule an appointment. If you have any questions, please see me immediately.

_____(initials)

cc: Personnel file
Director of Health and Medical Services
Regional Superintendent

I am in receipt of this memorandum.

_____ _____
Signature (Employee) Date

Prohibited Activities by Public Servants — State Law

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

Bribery

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

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

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

Penal Code 36.01(3), .02

Illegal Gifts

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

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

Exceptions

Illegal Gifts does not apply to:

1. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully enti-

tled or for which the public servant gives legitimate consideration in a capacity other than as a public servant;

2. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

3. A benefit to a public servant required to file a statement under Government Code Chapter 572 or a report under Election Code Title 15 that is derived from a function in honor or appreciation of the recipient if:

   a. The benefit and the source of any benefit in excess of $50 is reported in the statement; and

   b. The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

4. A political contribution as defined by Election Code Title 15;

5. An item with a value of less than $50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;

6. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or

7. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

Penal Code 36.10

Honoraria and Expenses

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

Abuse of Official Capacity

A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly violates a law relating to the public servant's office or employment, or misuses government property, services, person-

nel, or any other thing of value, belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment. *Penal Code 39.02(a)*

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

"Misuse" means to deal with property contrary to:

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

Penal Code 39.01(2)

Misuse of Official Information

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

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

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

1. The person has access to by means of the person's office or employment; and
2. Has not been made public.

"Information that has not been made public" means any information to which the public does not generally have access, and that is pro-

hibited from disclosure under Government Code Chapter 552 (the Public Information Act).

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

Instructional Materials Violations — Commissions

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

Instructional Materials Violations — Conflict

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

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

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

Education Code 31.152(b)–(d)

Instructional Materials Violations — Purchase and Distribution

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

Holding Civil Office

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

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

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

district created under Section 59, Article XVI, or Section 52, Article III. *Tex. Const., Art. XVI, Sec. 40(b)*

Conflicts Disclosure Statement

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

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

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

Local Gov't Code 176.003(a)–(a-1)

Definitions

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

"Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a per-

sonal, professional, or business relationship independent of the official status of the recipient. *Local Gov't Code 176.001(2-b)*

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

Personal Services Performed by Administrators

Definition

"Administrator" means a person who has significant administrative duties relating to the operation of a school district, including the operation of a campus, program, or other subdivision of the district. This term does not include a school district employee whose employment contract responsibilities primarily include the in-classroom instruction of students or trustee of a school district.

Prohibition

An administrator may not receive any financial benefit for the performance of personal services for:

1. Any business entity that conducts or solicits business with the school district that employs the administrator;
2. Subject to the exception below, an education business that provides services regarding the curriculum or administration of any school district; or
3. Subject to the exception below, another school district, open-enrollment charter school, or regional education service center.

Exception

An administrator, other than a member of a board of managers, superintendent, or assistant superintendent, may receive a financial benefit for the performance of personal services for an education business that provides services regarding the curriculum or administration of any school district or the performance of personal services for another school district, open enrollment charter school, or regional education service center if:

1. A written contract describing the services to be performed by the administrator is provided to the board of trustees of the administrator's employing district; and
2. The board of trustees for the administrator's employing district votes to approve the contract after determining that:
    a. The contract will not harm the district;
    b. The arrangement does not present a conflict of interest; and
    c. The services to be performed by the administrator will be performed entirely on the administrator's personal time.

Disclosure Under the Texas Public Information Act

A contract provided to a board of trustees under Education Code 11.006(c) is subject to disclosure under Government Code Chapter 552 (Public Information Act).

Civil Penalty

An administrator who violates this section is liable to the state for a civil penalty in the amount of $10,000 for each violation.

Education Code 11.006

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

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

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

Gifts

No gift, favor, loan, service, entertainment, or anything of more than token value shall be accepted by District employees from any District vendor or prospective vendor seeking to do business with the District. Items of token value include trinkets of minimal value such as coffee mugs, key chains, caps, and the like. Plaques and commemorative items are not considered to be gifts. [See CAA, CB, and CBB]

Meals

Meals exceeding $100 in the aggregate per year from any single source, District vendor, or prospective District vendor are strictly prohibited. Meals that exceed $50 per meal or up to $100 in the aggregate per year from any District vendor or prospective vendor must be reported.

E-Rate

In the case of E-Rate matters, governance provided at CAA supersedes these requirements.

Conflict of Interest

An employee shall not have a personal financial interest, business interest, or any other obligation (e.g., Board member, consultant) that in any way creates a substantial conflict with the proper discharge of assigned duties and responsibilities or that creates a conflict with the best interest of the District.

The Board and the District require employees to put the interests of the District before the interests of external organizations with which they are affiliated, such as being a board member of a volunteer organization. To avoid the appearance of a conflict of interest, any work with outside organizations that are interested in or likely to be interested in any contract, purchase, or financial transaction with the District shall be subject to disclosure by an administrative employee as defined in administrative regulation.

Disclosure Statement

Each employee shall be required to execute the semiannual disclosure statement (i.e., semiannually), certifying that the employee will conform with the requirements of Section 16 of the Special Act of 1923, which created the District.

Definition

"Conflict of interest" includes the common law conflict of interest and the following definition in Section 16 of the Special Act of 1923:

> *No Superintendent, business manager, or any other person holding any position of employment under said Board, shall be directly or indirectly interested in any purchase, sale, business, work or contract, the expense, price or consideration of which is paid from the school funds of said District; nor shall any employee purchase any warrants or claims against said Board or District, or any interest therein, or become surety for any person or persons having a contract or any kind of business with said Board, for the performance of which security may be required. Anyone violating this provision shall be discharged from services.*

If the employee is in doubt about a particular item, written clarification shall be requested concerning any transaction or potential transaction that might create a conflict of interest.

CONFLICT OF INTEREST REVIEW COMMITTEE

1. The Conflict of Interest Review Committee was established to analyze possible conflict of interest disclosures submitted to the Superintendent or Human Resources. As a general rule, an employee who has questions about whether his or her personal activities might in any way be in conflict with the best interests of the District or established legal, moral, or ethical principles, must seek written clarification by completing the Conflict of Interest Question form and submitting it to his or her supervisor. The committee determines if the question or disclosure is a violation of the conflict of interest policy. The committee's decision is communicated to the Superintendent and Human Resources.

MEMBERSHIP

2. The Conflict of Interest Review Committee is composed of a representative from each of the following areas of administration:

   - Academic Services;
   - Business Operations;
   - Chief of Staff;
   - Finance;
   - Human Resources;
   - Inspector General; and
   - Legal Services.

   The chairperson and secretary will be determined by a vote of the committee. The representatives from Legal Services, Human Resources, and the inspector general will only serve in an ad hoc nonvoting advisory capacity. In addition to the above individuals, the immediate supervisor and the executive manager or general manager of the requesting employee will be present when the committee reviews the conflict of interest document.

OPERATING PROCEDURES

3. Operating procedures for the committee are as follows:

   MEETINGS

   a. Meetings are held as needed, at least semi-annually, or at the request of the committee chairperson. The committee will also meet within 30 days after March 1 and September 1 for the semi-annual conflict of interest statement filing.

   AGENDA

   b. The chairperson is responsible for preparing the agenda.

RECORDS

c. The secretary of the committee maintains a record of all decisions and significant discussion items.

DECISIONS

d. Decisions are based on the consensus of the committee.

NOTIFICATION

e. Notification of decision will be communicated to the employee seeking clarification of the conflict of interest.

CONSULTATION

4. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

5. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

CONFLICT OF INTEREST

1. For the purpose of this regulation, the following definitions will apply:

GIFT

a. A gift is any benefit or item of value received, except for trinkets of minimal value (i.e., coffee mugs, key chains, caps, and the like). Plaques and like commemorative items are not considered to be gifts. See Reference (c).

ADMINISTRATIVE EMPLOYEE

b. An administrative employee will be defined as any HISD employee in pay grade 14 and above. See Reference (c).

VENDOR

c. An individual, organization, or agency with an interest in selling a product or service to HISD, either their own or that of another as their agent, for a price or pecuniary equivalent.

PARTNER

d. An individual, organization, or agency associated with HISD as a contributor in a joint endeavor. One that is united or associated with HISD in an activity or area of common interest.

GENERAL PRACTICE

2. Upon completion of new employee orientation, each administrative employee will complete a Conflict of Interest Training Acknowledgement Form for New Administrative Employees indicating that he or she understands the District's policies and procedures regarding conflict of interest. See References (a), (b), (c), and (d), and Exhibit (3).

Each administrative employee will execute the Semi-Annual Conflict of Interest Statement (Exhibit 4), certifying that he or she will conform to the requirements of Section 16 of Reference (f) that created HISD as hereinafter set forth. After completion, this form will be submitted to Human Resources by the employee's supervisor for further processing.

In the case of E-Rate matters, governance provided at CAA supersedes these requirements. All E-Rate employees, regardless of pay grade, will complete the conflict of interest form semi-annually.

PROCEDURES

3. Procedures for conflict of interest requirements are as follows:

PROHIBITED GIFTS

a. No gift, favor, loan, service, or anything of value will be accepted or solicited by employees. Specific examples of prohibited gifts from District vendors and prospective vendors include, but are not limited to:

- Game tickets (i.e., football, basketball, baseball, soccer, and any other sporting events);

- Entertainment tickets (i.e., theatre, shows, circus, and other entertainment events);
- Hunting trips, and related paraphernalia;
- Fishing trips, and related paraphernalia;
- Vendor paid or assisted vacations;
- Free services;
- Utilization of facilities;
- Clothes;
- Jewelry;
- Electronic devices; and
- Monetary gifts of any kind.

POTENTIAL CONFLICT OF INTEREST

b. If an employee has a question regarding a potential conflict of interest or ethical issue, he or she must complete the Conflict of Interest Question Form and submit it to his or her immediate supervisor. See Exhibits (1) and (2). The supervisor sends a copy of the Conflict of Interest Question Form and a preliminary recommendation to the deputy superintendent for human talent for approval. Human Resources will refer any unresolved questions or problematic recommendations to the Conflict of Interest Review Committee for review of possible violations. The employee, appropriate direct report to the superintendent, and superintendent are notified of the decision of the Conflict of Interest Committee. See Reference (f) and Exhibit (1) for more information.

REPORTING ITEMS OF VALUE

c. The direct reports to the Superintendent will provide to administrative employees before March 1 and September 1 of each year copies of the HISD Semi-Annual Conflict of Interest Statement and Semi-Annual Disclosure Statement. See Exhibits (4) and (5). Each administrative employee must complete the HISD Semi-Annual Conflict of Interest Statement and attach it to Semi-Annual Disclosure Statement indicating that he or she will conform to the requirements of Section 16 of Reference (f) and this regulation. These forms must be completed semi-annually and submitted to the employee's supervisor, who forwards the forms to the appropriate direct report to the Superintendent. The direct report reviews the completed forms and forwards them to Human Resources. See Reference (d). Human Resources reviews the forms and

forwards problematic issues or possible violations to the Conflict of Interest Review Committee. The employee, appropriate direct report to the Superintendent, and the Superintendent are notified of decisions of the committee.

LEGAL BASIS

4. Pertinent text of Section 16 of Reference (f) is as follows:

No superintendent, business manager, or any other person holding any position or employment under said board, shall be directly or indirectly interested in any purchase, sale, business, work, or contract, the expense, price, or consideration of which is paid from the school funds of said District; nor shall any such officer or employee purchase any warrants or claims against said board or District, or any interest therein, or become surety for any person or persons having a contract or any kind of business with said board, for the performance of which security may be required. Anyone violating this provision shall be discharged from services…

STANDARDS OF CONDUCT

5. Employee standards of conduct are as follows.

EXCEPTIONS

a. As a general rule, no gift, favor, loan, service, or anything of value will be accepted by HISD employees from vendors or prospective vendors seeking to do business with HISD. See Reference (a). The only exceptions to this rule include trinkets of minimal value (see GIFT above), meals, conference registration fees, or travel expenses as outlined in CONFERENCE FEES OR EXPENSE-PAID TRIPS AND SPECIAL PRIVILEGES AND EXEMPTIONS.

MEALS

b. Meals that exceed $50 per meal or up to $100 in the aggregate per year (September 1 through August 31) from any single source will be reported on Exhibits (4) and (5). Meals exceeding $100 in the aggregate from any single source are strictly prohibited. See References (a) and (d).

Supervisors may impose more strict standards with written notice to their staff members.

CONFERENCE FEES OR EXPENSE-PAID TRIPS

c. No employee will accept payment of conference registration fees nor trips financed by a company or firm without securing advance written guidance from the Superintendent. Upon approval, an employee may accept payment of conference registration fees and or associated travel expenses from partners if it serves the general benefit of the District. An employee may accept meals, transportation, and lodging expenses in connection with services (i.e., addressing an audience or engaging in a seminar) to

the extent that those services are more than merely perfunctory.

SPECIAL PRIVILEGES AND EXEMPTIONS

d. Employees may not accept anything of value from a current or prospective vendor. If the party is both a nonprofit vendor and a partner, an exception may be requested. Examples of items for which an exception might be requested include free/discounted training services or expenses associated with site visits. Such requests should be submitted in writing, using the exemption request form. See Exhibit (6). This form should be submitted to the Superintendent with a clear statement of how the requested exception serves the general benefit of the District. Approval of such requests will be rare and approved only in extenuating circumstances as determined by the Superintendent. Completed exemption forms should be submitted to Human Resources in conjunction with Exhibits (4) and (5).

An employee's official position will not be used to secure special privileges or exemptions for the employee or others except as may be otherwise provided by law. If an employee is in doubt concerning a potential conflict, he or she must ask for written clarification from his or her immediate supervisor by submitting a Conflict of Interest Question Form. See Exhibit (2). This written clarification should pertain to a specific potential conflict of interest.

GIFTS FROM SUBORDINATES

e. No gift, favor, loan, service, or anything of greater than $50 in value will be accepted by HISD employees from subordinates. See Reference (a). See GIFT, above.

CONFIDENTIAL INFORMATION

f. No employee will disclose confidential information gained by his or her official position or use such information for his or her personal gain or benefit. This pertains to any confidential information to which an employee might have access, including but not limited to:

- Information from confidential student records;
- Confidential information from employee records;
- Impending real estate transactions as they relate to the District; and
- Purchases contemplated by the District when such information might give an unfair advantage to one company.

OTHER EMPLOYMENT

g. No administrative employee of HISD will accept other employment that might impair his or her independence of judgment in the performance of his or her public duties.

CONTRIBUTIONS

h. Nothing in this regulation will prohibit contributions of any sort to the HISD Foundation or to the District trust, agency, special revenue, or permanent funds.

CLARIFICATION OF CONFLICT OF INTEREST

i. If an employee has a question about whether his or her personal activities might in any way be in conflict with the best interests of the District or established legal, moral, or ethical principles, he or she will seek written clarification of these points from his or her immediate supervisor. See paragraph REPORTING ITEMS OF VALUE, above.

CONSULTATION

6. This regulation has been through consultation (Administrative: December 9, 2008; Instructional: December 4, 2008; Noninstructional: December 9, 2008).

MAINTENANCE RESPONSIBILITY

The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy BBFA(LEGAL)

(b) Board Policy CAA(LOCAL)

(c) Board Policy DBD(LEGAL)

(d) Board Policy DBD(LOCAL)

(e) DBD1(REGULATION)

(f) Special Act of 1923

EXHIBITS:

(1) Houston Independent School District Conflict of Interest Question Flowchart

(2) Form – Conflict of Interest Question Form

(3) Form – Houston Independent School District Conflict of Interest Training Acknowledgement Form for New Administrative Employees

(4) Form – Houston Independent School District Semi-Annual Conflict of Interest Statement

(5) Form – Semi-Annual Disclosure Statement

(6) Form – Exemption Request

Employment Policies

A board shall adopt a policy providing for the employment and duties of district personnel. The policy shall provide that:

1. A board employs and evaluates the superintendent;
2. A superintendent has sole authority to make recommendations to a board regarding the selection of all personnel, except that the board may delegate final authority for those decisions to the superintendent [see Superintendent Recommendation, below];
3. Each principal must approve each teacher or staff appointment to the principal's campus as provided by Education Code 11.202 [see DK and DPA];
4. Notice will be provided of vacant positions [see Posting of Vacancies, below]; and
5. Each employee has the right to present grievances to the board. [See Grievances, below]

Education Code 11.1513(a), (d), (i)

Tax Identifier

A board shall adopt a policy prohibiting the use of social security numbers as employee identifiers other than for tax purposes [see Social Security Numbers, below]. *Education Code 11.1514* [See DBA]

Contract Positions

A board shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply. *Education Code 21.002(c)* [See DCB and DCC]

Delegation of Authority

A district's employment policy may specify the terms of district employment or delegate to the superintendent the authority to determine the terms of employment with the district. *Education Code 11.1513(c)* [For nepotism implications, see BBFB and DBE]

Availability

A district shall post on its internet website, if the district has a website, the employment policy adopted by the board under Education Code 11.1513(a) and the full text of any regulations referenced in the policy.

A district shall make available any forms referenced in its employment policy on an intranet website that is maintained by the district and accessible to district employees, or at a district administrative office designated by the district if the district does not maintain an intranet website.

Education Code 11.1513(k)

Internal Auditor

If a district employs an internal auditor, the board shall select the internal auditor and the internal auditor shall report directly to the board. *Education Code 11.170* [See CFC]

Superintendent Recommendation

A board may accept or reject a superintendent's recommendation regarding the selection of district personnel and shall include the board's acceptance or rejection in the minutes of the board's open meeting, in the certified agenda or tape recording of a closed meeting, or in the recording required under Government Code 551.125 or 551.127, as applicable. If a board rejects a superintendent's recommendation, the superintendent shall make alternative recommendations until the board accepts a recommendation. *Education Code 11.1513(b)*

Posting of Vacancies

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

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

Education Code 11.1513(d)

Exception

If, during the school year, a district must fill a vacant position held by a teacher, as defined by Education Code 21.201 [see DCB], in less than five school days, the district must provide notice of the position in the manner described above as soon as possible after the vacancy occurs. However, a district is not required to provide the notice for five school days before filling the position or to provide a reasonable opportunity to apply for the position. *Education Code 11.1513(e)*

Grievances

A district's employment policy must provide each employee with the right to present grievances to the board. The policy may not restrict the ability of an employee to communicate directly with a member of the board regarding a matter relating to the operation of

a district, except that the policy may prohibit ex parte communication relating to:

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

Education Code 11.1513(i)–(j) [See DGBA]

Transfers

A district's employment policy may include a provision for providing each current district employee with an opportunity to participate in a process for transferring to another school in or position with the district. *Education Code 11.1513(c)(3)* [See DK]

Daily Rate of Pay

The employment policy must provide that for purposes of determining the amount of a reduction in the salary of a classroom teacher, full-time counselor, or full-time librarian for unpaid leave, the employee's daily rate of pay is computed by dividing the employee's annual salary by the number of days the employee is expected to work for that school year. *Education Code 11.1513(l)* [See DEC]

Contract Employees

A district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a probationary contract, a continuing contract, or a term contract. A district is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. *Education Code 21.002*

Classroom Teacher

"Classroom teacher" means an educator who is employed by a district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher's aide or a full-time administrator. *Education Code 5.001(2)*

Minimum Length of Contract

A contract between a district and an educator must be for a minimum of 10 months of service. An educator employed under a 10-month contract must provide a minimum of 187 days of service. *Education Code 21.401(a), (b)*

Proportionate Reduction

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

Commissioner Waiver

The commissioner of education may reduce the number of days of service if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools. A reduc-

tion by the commissioner does not reduce an educator's salary. *Education Code 21.401(c), 25.081(b)*

Educational Aides

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

Employment of Retirees

Monthly Certified Statement

A district shall submit to the Teacher Retirement System of Texas (TRS) a monthly certified statement of employment for all retirees employed by the district during each month of a school year. A district shall inform TRS of changes in status of the district that affect the district's reporting responsibilities.

Deadline

A district must submit the monthly certified statement and all required employer surcharges under 34 Administrative Code 31.3 (relating to Return-to-Work Employer Pension Surcharges) for each report month from September through July before the eleventh day of the month following the applicable report month. For the monthly certified statement for the report month of August, the employer shall submit the monthly certified statement and all required employer surcharges before the seventh day of September.

If the due date for submission of a monthly certified statement and required employer surcharges falls on a weekend or federal holiday, a district shall submit the monthly certified statement and required employer surcharges on the last business day prior to the due date.

Late Submissions

A district that fails to timely submit a monthly certified statement and all required employer surcharges must also pay all applicable interest and late fees. A district must pay to TRS the late fee established by rule for each business day that the monthly certified statement is past due.

Required Information

A monthly certified statement is not considered submitted to TRS until it is completed. To be complete, the monthly certified statement must include all the following information regarding a retiree employed by the employer during the report month:

1. The number of hours and days worked by the retiree;
2. Whether the retiree's employment qualifies as one or more of the following types:
    a. Substitute employment;
    b. One-half time or less employment;
    c. Employment as a tutor under Education Code 33.913;

d. Employment in a federally funded COVID-19 personnel position that meets the requirements of Government Code 824.6021 and 34 Administrative Code 31.16 (relating to Federally Funded COVID-19 Personnel);

e. Full-time employment;

f. Trial employment of a disability retiree for up to three months; or

g. Any combination of these types;

3. The amount of gross compensation paid to the retiree during the report month;

4. The total amount due under 34 Administrative Code 41.4 (relating to Employer Health Benefit Surcharge); and

5. Any other information requested by TRS.

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

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

Former Board Member Employment

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

New Hires

I-9 Forms

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

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

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

2. For an individual whose employment authorization expires, not later than the date of expiration.

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

New Hire Reporting

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

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

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

Deadline

New hire reports are due:

1. Not later than 20 calendar days after the date a district hires the employee; or

2. In the case of a district transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.

Penalties

A district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.

42 U.S.C. 653a(b), (c); Family Code 234.101–.105; 1 TAC 55, Subch. I

Donations for Supplemental Educational Staff

A district shall accept from a parent-teacher organization or association recognized by the district a donation designated to fund supplemental educational staff positions at a school campus and spend the donation accepted for the designated purpose at the direction of and within the time period specified by the school campus for which the donation was designated. This provision expires September 1, 2025. *Education Code 11.156(c), (d)*

Social Security Numbers

A board shall adopt a policy prohibiting the use of the social security number of an employee of the district as an employee identifier other than for tax purposes. *Education Code 11.1514* [See DBA]

Federal Law — A district shall not deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number.

Exceptions — The federal law does not apply to:

1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;

2. Any disclosure to a district maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or

3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver's license, or motor vehicle registration law within a district's jurisdiction.

Statement of Uses — A district that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.

Privacy Act of 1974, Pub. L. No. 93-579, Sec. 7, 88 Stat. 1896, 1897 (1974)

Employment Assistance Prohibited

Federal Law — A district that receives Title I funds shall have regulations or policies that prohibit any individual who is a school employee, contractor, or agent, or a district, from assisting a school employee in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or district knows, or has probable cause to believe, that such school employee engaged in sexual misconduct regarding a minor or student in violation of the law.

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

1. The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investi-

gated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee engaged in sexual misconduct regarding a minor or student in violation of the law;

2. The school employee has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or

3. The case or investigation remains open and there have been no charges filed against, or indictment of, the school employee within four years of the date on which the information was reported to a law enforcement agency.

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

State Law

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

1. The person assists another person in obtaining employment at a school district, private school, or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and

2. The person knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law.

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

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

Personnel Duties	The Superintendent or designee shall define the qualifications, duties, and responsibilities of all positions and shall ensure that job descriptions are current and accessible to employees and supervisors.
Posting Vacancies	The Superintendent or designee shall establish guidelines for advertising employment opportunities and posting notices of vacancies. These guidelines shall advance the Board's commitment to equal opportunity employment and to recruiting well-qualified candidates. Current District employees may apply for any vacancy for which they have appropriate qualifications.
Employment of All Personnel	The Board delegates to the Superintendent final authority to hire contractual and noncontractual personnel. [See also BJA(LOCAL)]
Preference for Veterans	When applicants are equally qualified for a position, veterans who are discharged from active duty under an honorable discharge shall be extended an interview and, if equally qualified, will receive a hiring preference. [For information related to the evaluation of criminal history records, see the DBAA series.]
Employment Requirements	All employees shall meet the requirements specified by the District for the positions for which they are hired. Exceptions to this provision may be made only by the Superintendent.
Unauthorized Persons on District Premises	No person independently hired by a District employee shall be allowed to perform any tasks or volunteer any duties on District premises without prior approval of the principal, work location supervisor, and/or the Human Resources Department. [See also DH(LOCAL), GKG(LOCAL)]
Exit Interviews	Employees resigning or retiring from the District may be asked to participate in exit interviews.
Resignation or Retirement in Lieu of Termination	An employee who retired or resigned in order to avoid termination shall not be eligible for reemployment with the District. [See also DFE(LOCAL)]
Employment Assistance Prohibited	No District employee shall assist another employee of the District or of any school district in obtaining a new job if the employee knows, or has probable cause to believe, that the other employee engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. [See the CJ series for prohibitions relating to contractors and agents and DH(EXHIBIT) for the Educators' Code of Ethics.]

INTERVIEW COMMITTEE

1. An interview committee in the District is an ad hoc committee convened for the purpose of interviewing qualified applicants for vacant positions. A committee is not convened until Human Resources has advertised the vacant position. An interview committee is not required for filling every vacancy. [See DC(LOCAL)]

MEMBERSHIP

2. The membership of an interview committee varies and depends on the position for which applicants are to be interviewed. The committee membership is appointed by the appropriate work location supervisor or administrator. As much as possible, an interview committee should be ethnically balanced and consist of at least three but no more than five members.

SCHOOL INTERVIEW COMMITTEE

a. An interview committee for a school may include the school principal and the schools shared decision-making committee members.

NONSCHOOL INTERVIEW COMMITTEE

b. An interview committee for a nonschool location may include the department head or administrative designee, personnel with at least the same pay grade as the vacant position with similar position duties, and knowledge of and interest in the vacant position.

GUIDELINES FOR SELECTING CANDIDATES

3. Guidelines for interviewing and selecting candidates are as follows:

- The hiring manager should identify at least three candidates to be interviewed;
- The hiring manager or supervisor is responsible for maintaining all documentation including interview questions, notes, overall ratings, etc.
- The committee should choose one candidate to recommend for the position;
- The new assignment memorandum or new hire memorandum can be e-mailed, mailed (Route 10), or faxed to the appropriate human resources generalist (each generalist has an assigned fax number) as soon as a decision has been made by the school or department;
- The hiring manager should seek assistance from the next in line supervisor and/or the appropriate human resources generalist; and
- The hiring school or department is responsible for informing the selected candidate to report to Human Re-

sources to complete paperwork as necessary before reporting to the new position.

CONSULTATION

4. This regulation has been through consultation (Administrative: September 11, 2007; Instructional: September 6, 2007).

MAINTENANCE RESPONSIBILITY

5. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCE:

(a) Board Policy DC(LOCAL)

HIRING RETIREES

The Houston Independent School District (HISD) recognizes the wealth of experience of retired teachers and other employees and provides them with the opportunity for reemployment.

Schools will only hire retirees for instruction purposes. Schools will not hire retirees to serve as administrators or in clerical positions. Schools are responsible for paying the Teacher Retirement System (TRS) retiree surcharges.

The central office will only hire retirees for short-term projects of four months or less. The hiring department is responsible for paying the TRS retiree surcharges if any are incurred.

DEFINITIONS

For the purpose of this regulation, the following definitions will apply:

RETIREE

1. A TRS retiree is an individual who retired from TRS and is eligible for reemployment with the District. During employment after retirement, a retiree will not earn additional service credit, and TRS contributions will not be due on amounts earned.

HALF-TIME EMPLOYMENT

2. Half-time retiree employment is working less than one-half of the time required for a similar full-time (FTE) position. For TRS retiree surcharge purposes, one must work for the District in a 0.49 (or less) FTE position or an hourly position working one hour less than half-time for a particular calendar month.

REGULAR EMPLOYMENT

3. Regular retiree employment is employment that is expected to last four and one-half months or more.

TEMPORARY EMPLOYMENT

4. Temporary retiree employment is employment that is expected to last less than four and one-half months.

TEACHER RETIREMENT SYSTEM RULES

A one-month separation period is required of a person retiring from TRS if the retiree plans to return to work in the District. A retiree may not return to work or volunteer his or her services during this separation period or at any time during employment. The following guidelines will apply:

1. If the retiree retired before January 1, 2011, the employee may work in any capacity without losing his or her annuity; however, retiree surcharges will apply to any retiree who retired after September 1, 2005, who is working half-time or more. [See the TRS Web site (www.trs.state.tx.us/) for additional information]

2. If the retiree retired on or after January 1, 2011, the employee may work one hour less than half-time, as a substitute, or as a combination of substitute and half-time without forfeiting his

or her annuity. [See the TRS Web site (www.trs.state.tx.us/) for additional information]

3. If the retiree retired on or after January 1, 2011, the employee must wait 12 consecutive months before accepting full-time TRS eligible employment. However, the following will apply:

   a. TRS retiree surcharges will still apply to any retiree working half-time or more, for which the school will be responsible for paying.

   b. Failure to observe the 12-month break in service period will result in forfeiture of the employee's monthly annuity for each month in which that work occurs. [See the TRS Web site (www.trs.state.tx.us/) for additional information]

RE-APPLICATION

A TRS retiree must follow the same procedures as other applicants when applying for reemployment with the District. The procedures for applying for a position with the District are as follows:

APPLICATION

1. An applicant may post a resumé online by accessing the District's home page (www.houstonisd.org/), clicking on HISD-Jobs, and following the on-screen directions.

SCREENING AND INTERVIEWS

2. Human Resources screens all applications and resumés received for minimum job requirements and selects qualified candidates from the pool of applicants to interview. If selected, the TRS retiree will be interviewed by the school principal or department head seeking to fill a vacancy.

SELECTION

3. If the principal or department head selects the TRS retiree for the position, he or she will submit a written request to hire the TRS retiree to the appropriate Human Resources business partner. If the business partner agrees that the candidate meets the job requirements, the business partner will notify the TRS retiree of his or her appointment and salary.

COMPLETION OF HIRING PROCESS

4. The TRS retiree will complete the required paperwork and submit to a background check. The background check results must be submitted to Human Resources before the TRS retiree can report to work.

SALARY

The rehired TRS retiree will be compensated according to District guidelines for initial placement of new employees as defined in Reference (g).

MEDICAL BENEFITS

Medical leaves and benefits are as follows:

1. The rehired TRS retiree will be eligible for medical insurance based on the District's eligibility policy. [See References (d) and (e)]

LEAVE ALLOCATION

2. Leave time will be advanced and accrued at the same rate as a new hire (i.e., employee with no District experience). [See References (d) and (e)]

COMPENSATION AND CONTRACTS

The guidelines regarding compensation and contracts are as follows:

PAYROLL

1. The rehired TRS retiree will pay Medicare taxes according to federal guidelines. [See Reference (f)]

CONTRACTS

2. Contracts will be issued to eligible employees in compliance with District policy and guidelines. All rehired teachers will be issued a one-year probationary contract. [See References (a) and (b)] Administrators will be rehired according to Reference (c).

ALLOTMENT OR CAREER LADDER

3. Rehired TRS retired employees will no longer receive allotment or career ladder compensation.

LONGEVITY

4. Rehired TRS retired employees will not receive longevity pay.

SIGN-ON BONUSES

5. Rehired TRS retirees are not eligible for sign-on bonuses.

CONSULTATION

This regulation requires consultation (Administrative: October 11, 2011; Instructional: October 6, 2011; Noninstructional: October 11, 2011).

MAINTENANCE RESPONSIBILITY

The chief human resources officer, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DC(LEGAL)

(b) Board Policy DCA(LEGAL)

(c) Board Policy DCE(LOCAL)

(d) Board Policy DEC(LEGAL)

(e) Board Policy DEC(LOCAL)

(f) Social Security Act 218 Voluntary Agreement for Coverage of State and Local Employees

(g) HISD Compensation Manual

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS

1. There are certain requirements that must be met by all personnel applying for employment in the District. In addition, there are requirements applicable only to specific positions or categories. Those requirements for employment in the District that apply to all personnel are described in the following sections.

APPLICATION FOR POSITION

a. District employment requirements and guidelines are as follows.

APPLICATIONS

(1) There are three methods of applying for a position with the District. An applicant may:

- Visit https://prodnet.houstonisd.org/jobs/ hisd-jobs/default.aspx and complete his or her résumé using the online résumé system;
- Use the District's computer terminals in Human Resources to access the Internet job search system; or
- Mail his or her résumé to Human Resources at 3310 Cummins Lane, Houston, Texas 77027-5810.

A résumé and cover letter should be included for those applications submitted by mail. E-mailed and faxed résumés will not be accepted by the District.

INTERVIEW

(2) A personal interview is required of all applicants as a prerequisite to employment.

ACCURATE INFORMATION

(3) It will be the responsibility of the applicant to furnish accurate information, and any falsification of either information or credentials will be cause for dismissal or refusal to employ.

EMPLOYMENT LIABILITY

(4) Race, creed, color, age, sex, religion, marital status, national origin, or physical disability, except in situations where such disability will constitute an employment liability, will not be considered in judging eligibility.

VETERANS PRIORITY FORMS

(5) Effective November 1, 1996, Veterans Priority forms will be made part of the application process. Applicants with qualifications for existing vacancies, eligible for Veterans priority, or for critical areas will be given priority in scheduling appointments.

CREDENTIALS FOR REGULAR ASSIGNMENT

b. The following items are required for employment:

- Application form properly completed;
- Signed Access to Police Records form;
- College placement folder or references, if applicable to position;
- Completed Employment Eligibility Verification Form I–9;
- Tuberculosis test report signed by a doctor after an offer of employment;
- An official transcript of all college work showing degree and date conferred, and or verification of other training, which must be in the personnel file before credit, can be allowed on salary, if applicable to position;
- Proof of acceptable prior service. Information must be submitted on the state-approved form conforming to Texas Education Agency guidelines before credit can be allowed on salary; and
- Teacher certification. Documentation must be on file in Human Resources before employment is legal in a teaching assignment. Contracts are not valid in the absence of valid Texas certification.

Employees failing to complete the required personnel records necessary for state certification within 60 days from the beginning of the school year or from the first date of employment, whichever is later, are subject to a change in status and pay.

PHYSICAL FITNESS

c. An examination by a physician must be furnished when requested by the District after an offer of employment has been extended or during current employment. In certain circumstances (e.g., recent extraordinary exposure to X-rays), a request for waiver of X-ray will be considered when accompanied by a statement from a physician that includes the results of an examination for any abnormality of chest, heart, and lungs. Guidelines regarding physical fitness are as follows:

EMPLOYMENT COVERED UNDER STATE OR FEDERAL LAWS

(1) Applicants who have been offered employment who are in certain groups covered by state or federal law, including bus drivers, will be required to furnish

the results of an examination by a physician on prescribed forms.

COST OF PHYSICAL EXAMINATION

(2) The applicant who has been offered employment and is required to have a physical examination may select a physician from an approved list provided by the District and the District will pay up to $20 for the cost of the physical examination. The applicant will bear the expense of the required examination for tuberculosis.

EXAM RESULTS

(3) Results of the physical examination ensuring employability must be completed before the applicant who has been offered employment can begin to work. The physical examination and the report of an examination for tuberculosis indicating the type and results (e.g., chest X-ray or tuberculin skin test) will be included in a separate medical file, which will be treated as a confidential medical record.

PSYCHIATRIC EXAMS

(4) HISD reserves the right to require physical or psychiatric examinations, or both, of employees and applicants who have been offered employment.

CONSULTATION

2. This regulation has been through consultation (Administrative: April 16, 2002; Instructional: April 4, 2002; Noninstructional: April 9, 2002).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DBB(LEGAL)

(b) Board Policy DBB(LOCAL)

(c) Board Policy DC(LOCAL)

PROCEDURES APPLICABLE TO PRE-EMPLOYMENT POLYGRAPH EXAMINATION

1. Positions designated for the polygraph pre-employment requirement will be determined by the department head, reviewed by the appropriate direct report to the Superintendent and approved by the Superintendent or his or her designee. See References (a) and (b). Positions selected will be limited to those in which the employees have access to the keys to more than one of the buildings in the District and employees who have custody of District property, including, but not limited to, police personnel, alarm communications personnel, building inspectors, warehouse personnel, and truck drivers.

2. Consultation. This regulation has been through consultation (Administrative: August 13, 2001; Instructional: August 14, 2001; Noninstructional: November 5, 2001).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DC(LOCAL)

(b) Pre-employment Polygraph Examinations; Designating Positions as Requiring

EMPLOYMENT PRACTICES DC5
(REGULATION)

CONSIDERATION FOR EMPLOYMENT

1. When applicants for employment are being considered for assignment, the best-qualified individual, based on the criteria for filling vacancies, will be used. See Reference (a). The race, sex, ethnicity, marital status, or religion of the applicant will not be considered as a factor in the selection process.

ASSIGNMENT

2. Employment for assignment at the beginning of a school year will begin as early in the preceding school year as the needs for the next year can be determined. The assignment of new teachers will be determined no later than August 1, except in extenuating circumstances. New teachers will be notified of their assignments as soon as possible after the assignments have been determined.

PROCEDURES

3. Although the actual employment of applicants is a duty of Human Resources, the following procedures will provide the principal with the information needed in the selection process for his or her school.

PRE-EMPLOYMENT INFORMATION

a. The applicant will complete all pre-employment information for Human Resources including the Gallop, either partially or completely.

AVAILABILITY OF APPLICANT

b. The principal of the school where the vacancy exists will be contacted by Human Resources to state the availability of the applicant for the existing vacancy.

PERSONNEL FILE

c. The principal may go to Human Resources to review the personnel file of the applicant or receive an electronic copy of the file preferably before the applicant is sent to the school where the vacancy exists.

VISIT SCHOOL

d. Human Resources will send the applicant to the school where the vacancy exists, if practical.

SELECTION OR REJECTION

e. The principal will notify the respective generalist in Human Resources regarding the selection or rejection of the applicant to fill the position. The principal will fax or electronically mail the Request to Hire/Transfer Form to the generalist if the applicant is selected. See Reference (b). The completion of this transaction should take place as quickly as possible.

REFUSAL OF ASSIGNMENT

f. Applicants who refuse assignments or who delay responses will cause the evaluation of the application to be lowered.

CONSULTATION

4. This regulation has been through consultation (Administrative: April 16, 2002; Instructional: April 4, 2002; Noninstructional: April 9, 2002).

MAINTENANCE RESPONSIBILITY

5. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) DC13(REGULATION)

(b) Form – Request to Hire/Transfer Form

ADVERTISING VACANCIES

1. All personnel vacancies must be advertised in the Superintendent's Bulletin and other appropriate places outside the District when necessary for either five or ten days. Paraprofessional and classified personnel vacancies may be filled during any one of the ten working days during the application period. Notice of such vacancies will be posted in a prominent place in each school building. Notice will include the necessary qualifications and job description.

APPLICATIONS

2. Applications for vacancies will be made only to the official and or address specified in the Superintendent's Bulletin, which advertises such vacancies. Each vacancy advertised will carry a deadline date indicating the close of the application period.

CONSULTATION

3. This regulation has been through consultation (Administrative: April 16, 2002).

MAINTENANCE RESPONSIBILITY

4. The deputy superintendent of human talent, Human Resources, is responsible for maintenance of this regulation.

REFERENCE:

(a) Board Policy DC(LOCAL)

SELECTION OF ASSISTANT PRINCIPAL

1. The most important function of one in a leadership position is to identify individuals who can and will effectively and efficiently get the job done given the prevailing circumstances. In the District, hiring assistant principals is a responsibility of the principals.

SELECTION PROCESS

2. The selection process for assistant principals is as follows.

DEVELOP THE ASSISTANT PRINCIPAL PROFILE

a. Developing an assistant principal profile means identifying specific characteristics regarding the position and the qualifications it requires. A principal who is selecting an assistant principal for a vacant position must:

- Establish a team comprised of school staff, teachers, parents and or other community members who will develop the assistant principal profile utilizing the Assistant Principal Job Description and any other requisite skills necessary for the vacant position; and
- Submit the assistant principal profile to and obtain the approval of the regional superintendent or a designee prior to advertising the position or, if circumstances are such that the school is best served by a direct appointment, make an overriding case for such an appointment to obtain approval from the chief academic officer, School Administration. See Reference (a).

ADVERTISE VACANCY

b. After obtaining approval from the regional superintendent or a designee, and if necessary from the Superintendent, the principal must:

- Request that the appropriate generalists, Human Resources, advertise the vacancy and identify any special job requirements; and
- Determine whether the vacancy should be advertised for five or ten days on the HISD Current Job Openings Web site (https://prodnet.houstonisd.org/jobs/hisdjobs/default.aspx).

See Reference (b).

RECEIVE APPLICATIONS

c. The appropriate generalist, Human Resources:

- Reviews online applications;
- Screens all applications for minimum job requirements;

- Notifies each candidate that his or her application has been received and requests that qualified candidates complete the Hartman Value Profile, which is available only from Human Resources;
- Ensures that each candidate's profile summary has been received by Human Resources; and
- Forwards the Hartman Value Profiles of the qualified applicants to the principal. Principals may also view online all applications for vacant positions by using HISD Jobs.

SELECT CANDIDATES FOR INTERVIEWS

d. After receiving the applications, résumés, and profile summaries of qualified applicants, the principal and other designated staff members review the information, reduce the applicant group to the top five-to-seven applicants, and provide documentation regarding their selections. The top candidate group must complete the professional skills activity prior to the interview process. The principal then establishes and convenes an interview team to interview each member of the candidate group. The interview team will be composed of at least:

- Two top-performing assistant principals and/or principals;
- One regional office administrator; and
- The principal.

CONDUCT INTERVIEWS

e. The top five-to-seven candidates are interviewed as follows.

TEAM INTERVIEW

(1) Each prospective candidate is interviewed by the principal and other team members. Each team member will document and discuss his or her top candidate(s) and the reason(s) for his or her selection(s). Selection(s) should be based on:

- The candidate's answers to the interview questions;
- The candidate's résumé;
- Results of the Hartman Value Profile;
- Results of the professional skills activity;
- The candidate's educational preparation; and
- The candidate's references.

See Reference (b).

SELECT ASSISTANT PRINCIPAL

f. The principal discusses his or her recommendation with the regional superintendent or a designee; and provides all required documentation to support his or her selection. If there is an agreement that the recommended candidate meets the criteria, the principal writes a memorandum to the executive general manager, Human Resources, informing him or her of the selection and effective date, and requests a salary recommendation. If there is not an agreement, the principal reviews other top candidates or requests that the position be re-advertised.

RECOMMEND SALARY

g. The executive general manager, Human Resources, forwards the salary recommendation from Compensation and Records to the principal. Compensation and Records determines a salary based on the HISD Compensation Manual. See Reference (b). If a special salary placement is requested, that request is forwarded by the principal to the executive general manager, Human Resources, and approved by the chief academic officer, School Administration. Any salary recommendation beyond the salary range will require approval by the HISD Board of Education. See Reference (a).

NOTIFY CANDIDATES

h. All candidates are notified as follows:

- The principal notifies the selected candidate of his or her appointment after the chief academic officer, School Administration, gives final approval on the salary;
- The appropriate generalist, Human Resources, notifies the selected candidate of his or her appointment and salary; and
- The appropriate generalist, Human Resources, ensures that all other candidates are notified in writing that the position has been filled and thanks them for applying.

CONSULTATION

3. This regulation has been through consultation (Administrative: December 6, 2005; Instructional: January 5, 2006; Noninstructional: January 10, 2006).

MAINTENANCE RESPONSIBILITY

4. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) DC(EXHIBIT)

(b) HISD Compensation Manual

SENIORITY

1. Seniority is the total length of continuous employment with the District. An authorized leave will not be considered an interruption of continuous service.

LOSS OF SENIORITY

2. An employee will lose seniority and terminate employment with the District for the following reasons:

   - Resignation or retirement;
   - Failure to return to work when recalled from layoff as described in References (a); and
   - Involuntary lay-off for one year or a length of time equal to the length of his or her employment in the District, whichever is shorter.

CONSULTATION

3. This regulation has been through consultation (Administrative: February 11, 2002; Instructional: February 7, 2002; Noninstructional: February 12, 2002).

MAINTENANCE RESPONSIBILITY

4. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

EMPLOYMENT PRACTICES DC10
(REGULATION)

EMPLOYMENT REQUIREMENTS FOR CLASSIFIED PERSONNEL

1. Basic employment requirements will apply to classified personnel. See References (a) and (b). In addition, applicants selected must have specific qualifications and skills and appropriate experience or license, where applicable, for the position sought. Employees will be hired to fill specific positions but may be assigned to perform duties of other positions. Employment of all classified personnel will be in compliance with the Fair Standards Act of 1938, as amended.

FILLING OF VACANCIES

2. Positions will be filled on the basis of ability to perform duties in the vacant position. Houston Independent School District personnel will be given preferred consideration in the evaluation of applicants.

ASSIGNMENT

3. Assignments will be based on the needs of the District.

CONSULTATION

4. This regulation has been through consultation (Noninstructional: November 5, 2001).

MAINTENANCE RESPONSIBILITY

5. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) DC3(REGULATION)

(b) DC11(REGULATION)

COMPLIANCE WITH DIRECTIVES

1. The directives in this regulation are intended to promote workplace and student safety. Employees who fail to follow these directives will be subject to disciplinary action, up to and including termination.

SELECTION AND TRANSFER

2. The following directives apply to the selection and transfer of employees. See References (a), (b), and (c).

SELECTION

a. Before selecting staff, principals and work location supervisors should consult with their respective Human Resources generalists regarding applicant eligibility as well as applicant suitability for each position. Before making final selections, principals and work location supervisors should ask their respective generalists to examine personnel files and any other relevant information. This will enable principals and work location supervisors to make informed decisions as to whether the employees the Houston Independent School District (HISD) hires are fully qualified to work with students.

TRANSFER

b. When conducting an administrative transfer of an employee, District superintendents, work location supervisors, and principals will provide any investigation reports and all other relevant records of misconduct or performance problems to a principal or work location supervisor before that principal or work location supervisor is asked to accept the transfer of the employee. In this way, principals and work location supervisors will be better able to monitor the employee's performance.

TRAINING

3. The following directives will apply to the training of employees.

PRINCIPALS AND WORK LOCATION SUPERVISORS

a. Training concerning investigation of employee misconduct will be conducted, and all principals and work location supervisors will be required to attend.

ALL EMPLOYEES

b. Supervisors will formally remind employees that abusive language, sexual impropriety, and unreasonable force are prohibited and will not be tolerated. See References (e), (f), and (g). Corporal punishment is prohibited as a disciplinary method. Board policy regarding the use of corporal punishment will be strictly enforced. See Reference (k).

INVESTIGATIONS

4. The following directives will apply to the investigation of employees.

REPORTING ALLEGATIONS OF WRONGDOING

a. Principals and work location supervisors will immediately report allegations of wrongdoing in an appropriate manner. See Reference (l). In addition, principals and work location supervisors will report allegations of serious employee misconduct (e.g., sexual impropriety, unreasonable force, or possession or use of a weapon) to the appropriate District superintendent or department head. There are no degrees of freedom about this directive.

REASSIGNING EMPLOYEES

b. Principals and work location supervisors will immediately request temporary reassignment of any employee who is accused of serious misconduct with students (e.g., sexual impropriety, unreasonable force, or possession or use of a weapon). The reassignment will continue until final disposition of the allegations in order to avoid further contact with students.

CONDUCTING INVESTIGATIONS

c. District superintendents and department heads will instruct principals and work location supervisors to conduct investigations in a timely manner. In circumstances where a more extensive investigation is necessary, District superintendents and department heads will authorize, in a timely manner, investigations to be conducted by the appropriate investigative unit. These units include the HISD Equal Employment Opportunity office, Professional Standards, the HISD Police Department, Internal Audit, Risk Management, and Workers' Compensation.

COOPERATING WITH INVESTIGATIONS

d. Employees will facilitate and cooperate with all District investigations. Employees will not obstruct, prevent, or cause anyone else to prevent any District investigation. Retaliation against employees, students, or parents who make reports or who participate in a District investigation is strictly prohibited. See Reference (d).

REPORTING CHILD ABUSE AND NEGLECT

e. Principals and work location supervisors will follow Reference (m) concerning the responsibility of school officials to report child abuse and neglect.

DISCIPLINARY ACTIONS

5. The following directives apply to the discipline of employees. See References (h), (i), and (j).

RECOMMENDATION OF TERMINATION FOR SERIOUS MISCONDUCT WITH A STUDENT

a. Any work location supervisor who has an investigation~~,~~ confirming that an employee has been involved in serious employee misconduct, such as unreasonable force on or sexual misconduct with a student, will bring forward a recommendation of termination.

NOTIFICATION TO PARENTS OF RESOLUTION OF CASES OF EMPLOYEE SERIOUS MISCONDUCT WITH A STUDENT

b. Upon final action by the HISD Board of Education, when an employee is terminated, resigns or retires in lieu of termination, after an investigation concludes that the employee engaged in sexual impropriety with or used unreasonable force on a student, the principal or work location supervisor will be required to provide written notice of resolution to parents of students in direct contact with that employee.

FAILURE TO REPORT WRONGDOING

c. If any employee fails to report wrongdoing as required by Board policy, District procedures, and state law, the principal or work location supervisor will take appropriate disciplinary action.

CONSULTATION

6. This regulation has been through consultation (Administrative: February 11, 2003; Instructional: February 6, 2003; Noninstructional: October 7, 2003).

MAINTENANCE RESPONSIBILITY

7. The chief school administrator, School Administration, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DAB(LOCAL)

(b) Board Policy DC(LEGAL)

(c) Board Policy DC(LOCAL)

(d) Board Policy DG(LEGAL)

(e) Board Policy DH(EXHIBIT)

(f) Board Policy DH(LEGAL)

(g) Board Policy DH(LOCAL)

(h) Board Policy FFH(EXHIBIT)

(i) Board Policy FFH(LOCAL)

(j) Board Policy FFH(LEGAL)

(k) Board Policy FO(LOCAL)

(l) DH2(REGULATION)

(m) FFG(REGULATION)

EMPLOYMENT REQUIREMENTS

1. Basic employment requirements will apply for all personnel. See Reference (a). In addition, applicants selected must have specific qualifications and the appropriate experience and certification, where applicable, for the position sought. See Reference (b).

EVALUATIONS

2. Applicants will be evaluated by Human Resources using the following major criteria:

GENERAL CHARACTERISTICS

a. The applicant's oral and written language skills will be considered, as well as personal qualities.

ACADEMIC PREPARATION

b. The applicant's transcripts will be evaluated for relative strengths in English and his or her teaching area. (These areas will be given more consideration than the applicant's minimum grade point average.)

CERTIFICATION STATUS

c. The District will consider certification status and will give priority to those who show the most potential by state standards.

REFERENCES

d. The District will consider references provided from significant educators.

GALLOP TEACHER PERCEIVER INSTRUMENT

e. The District will consider the Gallop Teacher Perceiver instrument that generates information regarding teacher strengths in the basic classroom skills such as empathy, individualized perception, listening, innovation, focus, etc.

SELECTION COMMITTEE

3. A committee will review and evaluate files of applicants when sufficient background materials become available. Because of unavoidable delays in obtaining official transcripts, certificates, etc., the committee may review incomplete files if strong evidence is present to support a recommendation.

SPECIFIC ASSIGNMENTS

4. The following additional criteria will be used for candidates with equal major criteria evaluations and in determining specific assignments.

EXPERIENCE (CERTIFICATION ASSUMED)

a. Experience in:

- The field of vacancy;
- Other fields; or
- Special programs.

ADVANCED EDUCATION

b. An advance degree or hours towards an advanced degree.

SPECIAL ABILITIES

c. Special abilities such as:

- Bilingual;
- Professional publications;
- Curriculum development; or
- Other experiences (e.g. Cross cultural, Poverty, Inner City).

OFFER OF EMPLOYMENT

5. When two candidates are equally qualified for a position under the selective criteria of this section, the evaluation of the interviewer and the selection committee will determine which applicant is to be offered employment. This selection committee will provide an opportunity for a more varied input in making such decision. An instruction sheet will be developed by Human Resources that will standardize as much as possible the weights and criteria to be used by the Human Resources representative interviewing the candidate.

FILE LOCATION ~~S~~

6. All files will be maintained by the file room staff in one central location that is accessible for quick reference by Human Resources personnel, department heads, and principals. Human Resources will coordinate the interaction between departments and principals until successful placement is made.

CONSULTATION

7. This regulation has been through consultation (Administrative: April 16, 2002; Instructional: April 4, 2002; Noninstructional: April 9, 2002).

MAINTENANCE RESPONSIBILITY

8. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) DC3(REGULATION)

(b) DBA (REGULATION)

(c) DC5(REGULATION)

H-1B Visa

The objective of these procedures is to outline the process for sponsoring an immigrant with an H-1B visa to obtain employment with the Houston Independent School District (HISD). These procedures are intended to expand the number of candidates available to District campuses and departments.

Definitions

For the purposes of this regulation, the following definitions will apply:

H-1B Visa Classification

This classification applies to non-United States (US) citizens applying for a school-based position that requires a bachelor's degree or equivalent in a critical shortage area, as defined by the district. This H-1B classification requires a Labor Attestation issued by the U.S. Secretary of Labor.

District Sponsorship Fees

Sponsorship fees are required to be paid by the employer when hiring persons with H-1B visas. Approval to hire an individual who requires visa sponsorship may only be granted by the Chief Talent Officer or their designee. One consideration in hiring and sponsorship decisions will be whether there are available funds to cover the employer's costs for visa sponsorship and/or permanent residency. Available funds may include funds allocated in the budget from any allowable fund source to a department or campus.

Job Assignment

An H-1B visa candidate receives government approval for a visa based on the critical shortage assignment for which he or she is hired. This locks the candidate into the first-hired-job classification for the duration of their employment under the visa. For example, a candidate cannot be hired as a teacher to teach a specific content or grade level and subsequently given a position change outside the classroom for which they were hired.

General Information

A citizen of a foreign country (i.e., an immigrant) desiring to enter the U.S. must first obtain either a nonimmigrant visa for temporary stay or an immigrant visa for permanent residence. [See the Immigration and Nationality Act, section 101 Definitions] Degreed immigrants may occasionally be hired to work in public schools as teachers in critical shortage areas. These workers must obtain a temporary work visa with an H-1B classification to be considered for employment by HISD. Active employees of the district may then request to be sponsored for an H-1B by reaching out to the Office of Talent.

Critical Shortage Assignment

An assignment as a classroom teacher requires a bachelor's degree and must be in an area of critical shortage as defined by the District. [See Board Policy DC(LEGAL)] The critical shortage assignment areas are determined by the Office of Talent and updated annually. The Office of Talent will maintain a list of critical shortage areas for visa candidates and a list of critical shortage areas for

permanent resident candidates. Additional areas may be considered on a case-by-case basis.

A visa-sponsored employee who obtains one of these critical shortage positions must remain in the critical shortage area for the duration of employment with HISD while on a visa.

Hiring Process

To request approval from the chief talent officer or their designee for the hire of an immigrant with an H-1B visa classification, the following requirements are necessary.

School

The school or department must:

- Have a funded vacant position in a critical shortage area; and
- Recommend the applicant for visa sponsorship based on the specific skill level of the critical shortage area.

Human Resources

Human Resources must confirm a vacancy and issue a hire memorandum to the school before the applicant can begin the hiring process.

Candidate

The candidate must hold or meet all requirements for a standard Texas teaching certificate, meet all current HISD hiring standards, and pay all attorney processing fees associated with the INS application within ten working days of receipt of the confirmed offer of employment from Human Resources. [See the HISD *Compensation Manual*]

Recommendations for H-1B Renewal and Extension

An employee hired under an H-1B visa may receive an extension under the following conditions:

- The employee must have a written recommendation from the principal with the assistant superintendent's signature of approval or from the department supervisor with the chief officer's signature of approval;
- The employee must be in good standing and remain in the position for which they were originally hired. An employee on a growth plan or under investigation is not eligible;
- The principal or department supervisor must provide a demonstration of quality performance (i.e., performance evaluations, employee attendance, student achievement, etc.);
- The Office of Talent must confirm that there are available funds for any fees incurred; and
- The principal or department supervisor will be provided with a memorandum of understanding of cost and conditions for their signature approval.

Recommendations for Permanent Residency

An employee with an H-1B designation may be recommended for permanent residency under the following conditions. The employee must:

- Have completed a minimum of two years of service with HISD;
- Be certified by the State Board of Education in a critical shortage area or in a position of sponsorship;
- Remain in the original content area assignment, whether in the same campus or department or another campus or department;
- Have a minimum of two years remaining on the H-1B visa or, if less than two years remain, the Office of Talent determines that the permanent residency application has a reasonable likelihood of being approved within the time remaining; and
- Have a written recommendation from the principal or immediate supervisor based on documented evidence of success in the classroom (i.e., performance evaluations, employee attendance, student achievement, etc.)

The recommendation will be reviewed by administration, and the employee will be notified of sponsorship decision.

Withdrawal of Sponsorship

Withdrawal of a visa sponsorship may be based on the employee leaving HISD or the employee not meeting District expectations. Withdrawal of sponsorship cannot be used in lieu of the April 1 notice of nonrenewal of contract. District sponsorship will be withdrawn if an employee's contract is not renewed.

Funding

All payment of employer fees for sponsorship, extensions and renewals, and permanent residence will follow finance procedures as communicated by the Finance Department. [See the *Finance Procedures Manual*]

Consultation

This regulation has been through consultation (Administrative: May 25, 2022; Instructional: May 25, 2022; Noninstructional: May 31, 2022).

Maintenance Responsibility

The chief talent officer is responsible for maintenance of this regulation.

Effective Date

This regulation will be effective as of the adoption date, April 28, 2022.

DEFINITION

1. For the purposes of this regulation, an external candidate refers to a non-employee candidate recruited by the District for a principal or key staff position.

TRAVEL EXPENSE PAYMENT OR REIMBURSEMENT FOR EXTERNAL CANDIDATES

2. Approved travel expenses (i.e., airfare or mileage, hotel, car rental, and/or parking) for external candidates who must travel to the District to attend an interview at the request of the District will be paid by the District or reimbursed as outlined in this regulation.

   The District will only approve travel expenses for direct payment or reimbursement for principal and key staff position interviews.

DETERMINATION OF TRAVEL EXPENSES

3. The appropriate District administrator selects the external candidate to be interviewed and will determine if travel expenses will be paid for or will be reimbursed by the District.

VERIFICATION OF EXPENSES

4. Talent Management, Human Resources, is responsible for verifying eligible reimbursement expenses.

APPROVAL OF EXPENSES

5. The chief human resources officer or general manager, Talent Management, Human Resources, must approve all requests for external candidate travel reimbursement prior to the interview.

NOTIFICATION OF CANDIDATE

6. The external candidate is notified via telephone call or e-mail that he or she has been selected for a pre-employment interview and approved for travel expense payment or reimbursement.

DIRECT PAYMENT BY DISTRICT

7. The candidate is advised to coordinate travel arrangements and accommodations with Human Resources, if applicable. The appropriate Human Resources staff member will make reservation(s) and forward the documents to Accounts Payable for payment(s) as necessary.

EXTERNAL CANDIDATE REIMBURSEMENT

8. In the event the candidate requests to make and pay for his or her own reservations, the District will only reimburse for hotel, meals, flight (economy/coach class fare) and/or mileage, parking, and rental car, as needed. The District will reimburse these expenses after completion of the trip for those external candidates who elect to pay for travel and accommodations and who comply with the following:

   COMPLETE NECESSARY DOCUMENTS FOR REIMBURSEMENT

   a. The candidate must complete the District Travel Authorization and Payment /Reimbursement Voucher and attach receipts for parking and/or mileage as well as for flight, hotel, meals, and rental car, if the expenses were paid for by the candidate. (See Reference A)

SUBMIT DOCUMENTS

b. The Travel Authorization and Payment/Reimbursement Voucher and receipts must be submitted, within ten business days following the interview, to the appropriate Human Resources staff member for processing by Accounts Payable.

CHECK REIMBURSEMENT

c. Accounts Payable will mail the reimbursement check to the candidate's home address.

REIMBURSABLE RATES

9. The maximum reimbursable rate for hotel accommodations is the federal per diem rate for Harris County of $109. The rate is subject to change as per the U.S. General Services Administration. Specific rate information is available at www.gsa.gov/portal/category/100120.

CONSULTATION

10. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

11. The chief human resources officer, Human Resources, is responsible for maintenance of this regulation.

REFERENCE:

(a) EXHIBIT A - Travel Authorization and Payment /Reimbursement Voucher

CRIMINAL HISTORY RECORD CHECK

1. Pre-employment screening and employee background checks are more prevalent than ever before. The Houston Independent School District (HISD) Board of Education expresses its strong confidence in and appreciation for District personnel. However, one of the District's goals is to provide a safe environment for students and employees. To this end, criminal history background checks will be conducted on all active personnel and applicants. A criminal history review committee has been created to facilitate the appeals process for employee background checks.

CRIMINAL HISTORY REVIEW COMMITTEE

APPEALS

2. Qualified applicants and current employees whose criminal history background checks reveal a violation of District policy may appeal the criminal history restrictions to employment through a process of review by the Human Resources Operations department.

3. The criminal history review committee is an ad hoc committee convened for the purpose of conducting interviews as part of the appeals process. [See DC(LOCAL) and DH(LOCAL)]

COMMITTEE MEMBERSHIP

4. The criminal history review committee will be comprised of three members, one each from Human Resources, Legal Services, and the Police Department. The committee will select a member to preside over appeal hearings.

VIOLATIONS

5. An applicant or employee who has a criminal record that would preclude employment or continued employment with the District according to DC(LOCAL) would include a person who:

   a. Is a convicted felon;

   b. Is convicted of a misdemeanor involving moral turpitude. "Moral turpitude" is an act of baseness, vileness, or depravity in the private or social duties that a person owes another member of society in general and that is contrary to the accepted rule of right and duty between persons; or

   c. Is charged with a felony or misdemeanor involving moral turpitude, until there is a final disposition of the charge; or is on probation for any offense (including a deferred adjudication probation) that would otherwise restrict employment.

   However, a person charged with a criminal offense that was dismissed through deferred adjudication may appeal the restrictions to employment to the criminal history review committee except when the charge was for:

a. Capital murder, murder, voluntary or involuntary manslaughter, or any felony theft offense;

b. Indecency with a child; injury to a child, elderly, or disabled individual; kidnapping; aggravated kidnapping; aggravated sexual assault; aggravated assault causing serious bodily injury; sexual assault of a child; or aggravated robbery; or

c. Any felony where a deadly weapon was used or exhibited; or any felony related to the manufacture, delivery, or possession of marijuana, a controlled substance, or a dangerous drug. [See DBAA(LEGAL), DH(LOCAL)]

APPEAL PROCEDURE

6. The following procedures will apply to the appeal process:

INTERVIEW

a. The committee will schedule an interview to address each individual situation, considering the factors listed at item 5 above and item 7.a. or 7.b. below, as appropriate.

RECOMMENDATION

b. Upon completion of the interview, the committee will submit a recommendation to the chief human resources officer, Human Resources, or designee.

CONSIDERATION FINAL

c. The chief human resources officer, Human Resources, or designee will consider the criminal history review committee's recommendation in deciding whether or not the individual is eligible for employment or continued employment with the District.

FACTORS FOR EXEMPTION CONSIDERATION

d. The decision of the chief human resources officer, Human Resources, or designee regarding hiring or termination is final. The employee should refer to the termination process outlined in Board policy. [See DFAA(LEGAL/LOCAL), DFCA(LEGAL/LOCAL), DCD(LOCAL), DCD1(REGULATION), and DF(LEGAL)]

7. For both applicants and employees, the review committee will consider certain factors in determining whether or not to recommend an exemption from the criminal history restrictions to employment to the chief human resources officer, Human Resources, or designee, who will make a determination if the exemption will be granted.

APPLICANTS AND EMPLOYEES

a. Factors to consider for applicant and employee criminal history exemption are as follows:

(1) The nature and seriousness of the crime;

(2) The relationship of the crime to the potential assignment;

(3) The extent to which the potential assignment might offer the opportunity for repeated criminal conduct;

(4) The relationship of the crime to the applicant's ability, capacity, or fitness to perform the duties of the assignment;

(5) The extent of the criminal activity;

(6) The age of the person at the time of the offense;

(7) The length of time that has elapsed since the crime was committed;

(8) The conduct and work activity of the applicant before and after the crime;

(9) Evidence of rehabilitation;

(10) The applicant's truthful disclosure of the offense on his or her employment application;

(11) The applicant's or employee's truthful and timely disclosure of the charges or conviction. If the conviction was not disclosed prior to employment, that employee will be immediately recommended for termination;

(12) The applicant's/employee's truthfulness in relating the facts concerning the conviction to the committee as compared to police records or other information available to the committee; and

(13) The applicant's/employee's cooperation in obtaining records of the disposition of the offense, including fingerprinting, if requested.

CURRENT EMPLOYEES

b. An additional factor to consider for current employee criminal history waiver is whether the charge or crime has affected the employee's ability, capacity, or fitness to perform the duties of the assignment.

CONSULTATION

8. This regulation has been through consultation (Administrative: May 8, 2012; Instructional: June 7, 2012; Noninstructional: June 12, 2012).

MAINTENANCE RESPONSIBILITY

9. The senior manager, Human Resources Operations, Human Resources, is responsible for maintenance of this regulation.

TRAVEL AUTHORIZATION AND PAYMENT/REIMBURSEMENT VOUCHER

TRAVEL INFORMATION

Name:	
Address:	
Phone number:	
E-mail:	
Social security number*:	
Position applied for:	

REIMBURSEMENT INFORMATION

Receipts Required on Return		**Expenses to be Reimbursed**
Airfare:		$
Lodging:		$
Other Travel:		$
	Total	$

Note: Staple receipts for full reimbursement.

*****This information will be necessary for reimbursement purposes in accordance with Procurement guidelines.

Return complete forms to: Houston ISD, 4400 W. 18th St., Houston, TX 77092

Human Resources Attention: Alicia Lugo

PERSONS UNDER PROBATIONARY CONTRACTS

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

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

EXCLUSIONS

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

Education Code 21.101, .102(a)

EXCEPTIONS

REHIRES

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

PRINCIPAL OR CLASSROOM TEACHER

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

CHANGE IN PROFESSIONAL CAPACITY

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

This provision does not apply to an employee who is returned by the District to a professional capacity in which the employee was employed by the District before the District employed the employee

in the new professional capacity. The employee is entitled to be employed in the original professional capacity under the same contractual status as the status held by the employee during the previous employment by the District in that capacity.

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

TERM OF CONTRACT

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

MAXIMUM

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

EXCEPTION

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

Education Code 21.102

Term Contracts

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

Definition

In this policy, "teacher" means:

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

Exclusions

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

Education Code 21.201(1)

District-Required Certification

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

Probationary Contract Required

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

Exception

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

Contract Terms

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

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

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

Education Code 21.204(a)–(d)

Maximum Duration

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

Employment Policies

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

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

Education Code 21.204(d)

Property Interest

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

Preamble: Transformation of Policy Regarding Term of Contracts

In support of the District's goal to improve human capital and given that a substantial portion of the District budget is used to pay employee salaries, we, the HISD Board of Education, believe that in order to make the biggest impact on improving student performance, we must transform the ways in which the District attracts, retains, and compensates high-quality staff. Specifically, decisions regarding probationary, term, and continuing contracts must include review and consideration of value-added data.

Categories of Educator Employment Contracts

Chapter 21 of the Texas Education Code requires that teachers, nurses, school counselors, librarians, and other full-time professional employees who are required to hold a certificate be employed on a contract.

There are three types of contracts that are permitted by the Education Code — probationary contracts, continuing contracts, and term contracts; the District utilizes all three types of contracts.

1. **Probationary contract**: All teachers, prior to being issued a continuing or term contract, must be placed on a probationary contract. This contract may not be for a term exceeding one school year, but may be renewed for two additional years, unless the teacher has been employed as a teacher in public education for at least five of the last eight school years, in which case the probationary period is limited to one year.

2. **Continuing contract**: Teachers issued a continuing contract prior to November 1, 1996, and who are currently employed by the District shall remain on a continuing contract. Effective November 1, 1996, the District ceased issuing continuing contracts.

3. **Term contract**: Upon completion of the probationary period, teachers may be issued a term contract as described at DCC(LOCAL). Term contracts may be issued for a time period of one, two, or three years. If no action is taken to nonrenew a contract at the end of the term, then the contract is automatically renewed for an additional year.

Eligible Positions

The Board may employ by term contracts, as authorized by Education Code 21.002 and 21.201, the following categories of full-time certified professional employees: certified central office and campus administrators, teachers, school counselors, and librarians, and full-time nurses.

Non-Chapter 21 "Performance Contracts"

In addition, several alternative "performance contracts," not governed by Chapter 21 of the Education Code, shall be available for specific categories of employees, in accordance with DCE(LOCAL).

Grandfather Clauses

Contracts

Administrators employed before the cut-off dates established in DCE(LOCAL), who declined a performance contract, shall continue to receive term contracts as governed by the provisions of Chapter 21 of the Education Code.

The District, in its decisions regarding probationary, continuing, and term contracts, shall consider student performance and value-added data in its decisions regarding term contracts.

Continuing Contracts Retained

Any District employee hired under a continuing contract prior to November 1, 1996, shall remain under a continuing contract as long as the employee remains in the same contractual position. [See also DCC(LEGAL) and (LOCAL)]

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

EMPLOYMENT PRACTICES DCC
CONTINUING CONTRACTS (LEGAL)

APPLICABILITY

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

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

Education Code 21.154

FORMER ADMINISTRATORS

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

Continuing Contracts Retained

Any District employee hired under a continuing contract prior to November 1, 1996, shall remain on a continuing contract in accordance with law.

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

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

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

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

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

Exception

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

Nepotism

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

Dismissal Procedure

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

Termination of employment is a condition of work that is a proper subject for the grievance process. *Fibreboard Paper Prods. Corp. v. N.L.R.B., 379 U.S. 203 (1964); Sayre v. Mullins, 681 S.W.2d 25 (Tex. 1984)* [See DGBA]

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

Personnel not hired under a contract shall be employed on an at-will basis. [For information regarding contractual employment, see DCA, DCB, DCC, and DCE, as appropriate]

A noncontract employee shall have no expectation of continued employment or any right to due process other than those rights prescribed by state and federal constitutions.

Reassignment of Noncontract Employees

All noncontract employees are subject to assignment and reassignment of positions or duties, additional duties, changes in responsibilities or work, transfers, or reclassification at any time. [See also DK(LOCAL)]

Discipline / Other Employment Decisions

The following disciplinary actions and other employment decisions shall apply to all noncontract employees.

Demotions

A noncontract employee may be demoted for any reason not prohibited by law, as determined by the needs of the District.

Termination

A noncontract employee may be terminated for any reason not prohibited by law or for no reason, as determined by the needs of the District.

Reduction in Force

A reduction in force may take place when the Board determines that financial exigency exists or the Superintendent determines that a reorganization or program change is required.

Procedures for the reduction in force of noncontract employees shall be developed and maintained by the chief human resources officer. These procedures shall provide criteria to determine the mechanics of reduction, reassignment, termination, and recall. Any termination will be made in accordance with established current procedures on termination of noncontract employees set forth by the chief human resources officer. Subject to approval by the chief human resources officer or designee, assignments to new jobs will be based on matching of skill sets.

Reorganization

Reorganization is defined as a change in positions due to:

1. A change, elimination, or addition of a function within a department or school; or
2. A change in the role, responsibility, qualifications, or skill level of a significant number of employees within a department, school, or within a category of employees.

A reorganization shall be approved by the Superintendent. If during a reorganization it becomes necessary to terminate an employee, such personnel action shall be taken in accordance with applicable Board policy, state and federal law, and District procedures.

Procedures for a reorganization shall be developed. These procedures shall provide criteria to determine the mechanics of reduction, reassignment, and termination of staff, if necessary. Assignments to new jobs shall be based on matching of skill sets.

Appeal

A noncontract employee who has been notified of a demotion or termination may appeal the action in accordance with DGBA(LOCAL).

Resignation

A noncontract employee intending to resign shall give a minimum of two weeks' notice. If such notice is not given, the resigning employee shall not be eligible for reemployment with the District.

An employee who resigns or retires to avoid District-initiated termination shall not be eligible for reemployment with the District.

Conflict of Interest Violations

Upon completion of an individualized assessment conducted by the Conflict of Interest Review Committee, an at-will employee with a substantiated finding in violation of this policy that has affected the employee's ability, capacity, or fitness to perform the duties of the assignment will be dismissed.

Reassignment

All noncontract employees are subject to assignment and reassignment of positions, duties, additional duties, changes in responsibilities or work, transfers, or reclassification at any time.

Disciplinary Procedures

A noncontract employee may be reassigned, demoted, or terminated from employment with the District for any reason not prohibited by law or as determined by the needs of the District.

Termination or Demotion

A noncontract employee may be terminated or demoted. Procedures are as follows:

Principals and work location supervisors should:

- Consult with Employee Relations and, if necessary, Employee Relations will consult with Legal Services to review the employee's file; and
- Draft disciplinary action and deliver to terminated or demoted employee. Forward letter to Employee Relations to coordinate with Talent Management to finalize personnel action.

Appeals

Noncontract employees have a right to appeal termination, demotion, and/or other conditions of work, including employment status, in accordance with the District's employee grievance policy, DGBA(LOCAL).

Maintenance Responsibility

A designee from Employee Relations, Human Resources, is responsible for maintenance of this regulation.

Effective Date

This regulation is effective as of the adoption date, August 25, 2025.

Full-Time Noncontract Employees

The following guidelines will apply to full-time noncontract employees:

Benefits

See DEG(REGULATION) and CRD(REGULATION) for benefits available to noncontract District employees.

Alternative Certification Interns and District Permit Teachers

Alternative certification interns and District permit teachers are considered by the District to be contract employees governed by the employment agreements they enter into with the District.

Temporary Hourly or Daily Rate Employees

Temporary hourly employees will be employed on a daily basis as needed. The need will be determined by the department head, who channels the request for such help through the Human Resources Generalist. These employees:

- Will accrue no benefits unless their weekly scheduled hours exceed 32 hours and they are recommended by their supervisor;
- Will not be represented by consultation organizations;
- Will be paid only for hours worked and for jury duty service, provided that the work date was scheduled prior to the receipt of the jury summons by the hourly or daily rate employee. [See DEC6(REGULATION)];
- May be discharged or demoted at any time, with or without cause; and
- Are not covered by the provisions of DEG(REGULATION).

Resignation in Lieu of Termination

Employees who resign in lieu of termination are not eligible for reemployment with the District.

Maintenance Responsibility

The executive general manager, Human Resources, is responsible for maintenance of this regulation.

Effective Date

This regulation is effective as of the adoption date, August 25, 2025.

SELECTION OF FOOD SERVICE PERSONNEL

1. Food service is an important supplement to the educational program in every school because nutrition plays an important part in students' ability to learn and succeed in school. Principals and Food Services must carefully employ carefully selected and trained staff in order to achieve the high standards set by the District.

EMPLOYMENT GUIDELINES

2. Staff for the school Food Services units will include café managers, senior food services attendants, food services attendants, hourly food services attendants, hourly adult and student cashiers, substitute attendants, substitute cashiers, and money carriers. Senior food services attendants, food services attendants, and hourly adult and student cashiers are employed, trained, and assigned by Food Services. Money carriers are employed and assigned by the school principals. Principals must identify money carriers one week before school opens using forms provided by Human Resources. See References (c) and (d). Staff for the school Food Services units are responsible to Food Services management. The number of hours approved to perform duties is based on the meals per labor hour worked of each unit and is allocated by Food Services administration. Hourly adult and student cashiers' and money carriers' personnel and payroll records are processed in accordance with practices established for other personnel of the District.

RECRUITING AND HIRING

3. Food Services and Human Resources recruit, select, and assign all Food Services personnel with the exception of money carriers. Principals have an opportunity to review selections prior to final assignment. If a principal objects to an assignment, a written explanation of the objection must be submitted to the Food Services' supervisor for review by Food Services and Human Resources.

EMPLOYEE REQUIREMENT

4. Food Services employees:

- Will comply with all city health regulations pertaining to food handlers;
- Will comply with state law in regard to tuberculosis regulations for school employees;
- Will be members of the Teacher Retirement System of Texas;
- Will have the same employment benefits as other school personnel; and
- Will work the number of days as approved on the annual school calendar for Food Services employees.

Managerial employees must be certified in accordance with the Code of Ordinance of the City of Houston Health Department regulations.

DISCIPLINARY RESPONSIBILITIES

5. Disciplinary action, including termination, is administered by Food Services. Specific disciplinary responsibilities are as follows:

PRINCIPALS

a. A principal may suspend any Food Services employee from his or her campus pending review by either the employee's immediate supervisor or the Food Services' supervisor or both. The principal must immediately notify the supervisor by telephone of a suspension followed within 24 hours by a written account of the incident. The food services supervisor will investigate and take appropriate action according to Board policy. The food services supervisor will send a written report of the investigation and action taken to the principal.

FOOD SERVICES SUPERVISORS

b. Each food services supervisor is responsible for the discipline of his or her senior food services attendants.

CAFÉ MANAGERS AND SENIOR FOOD SERVICES ATTENDANTS

c. Each café manager and senior food services attendant is responsible for the discipline of food services attendants, hourly food services attendants, hourly adult and student cashiers, substitute attendants, and substitute cashiers in his or her area of responsibility.

EVALUATION

6. Food Services administration periodically evaluates Food Services employees according to Board policy. See Reference (a). Food Services offers principals an opportunity to evaluate Food Services personnel. The optional principal evaluation must be reviewed with the affected employee, then attached to and filed with the Food Services evaluation.

TRAINING

7. Food Services offers organized training on all Districtwide staff development days and monthly in-services for all senior food services attendants on the second Tuesday of each month. In addition, Food Services provides ongoing training for new and existing employees. Annually, Food Services invites principals to identify specific training needs and integrates these needs into the training programs.

FILLING OF VACANCIES

8. In selection of employees to fill vacancies, seniority will prevail provided skill, ability, employment records, and physical fitness are equal. Assignments will be based on the needs of the District. See Reference (b).

CONSULTATION

9. This regulation has been through consultation (Noninstructional: May 12, 2009).

MAINTENANCE RESPONSIBILITY

10. The chief business operations officer, Business Operations, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DN(LOCAL)

(b) Board Policy DP(LOCAL)

(c) Form – Cashier (For New Employees Only)

(d) Form – Principal's Request for Money Carrier Designation

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

Non-Chapter 21 Contract

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

Termination

End of Contract

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

Midcontract

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

Procedure

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

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

Hearing

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

Suspension

The employee may be suspended without pay, so long as the suspension is temporary, and the employee receives a due process hearing. *Gilbert v. Homar, 520 U.S. 924 (1997)*

Non-Chapter 21 Contracts

Employees in categories specified below shall, upon completion of a probationary period, be offered a performance contract or other contract for a one-year term, unless otherwise determined by the Superintendent. These contracts, which are not governed by Chapter 21 of the Education Code, represent an alternative to term contracts as established in DCB(LEGAL) and (LOCAL). Dispute resolution procedures are not available for contesting nonrenewal of these contracts.

Certified Administrator Performance Contract

A Certified Administrator Performance Contract shall be offered to employees required to have certification by law, Board policy, and/or job description.

Non-Certified Administrator Performance Contract

A Non-Certified Administrator Performance Contract shall be offered to employees whose positions do not require certification by law, Board policy, and/or job description.

Termination And Nonrenewal

Performance contracts may be terminated for cause, without cause, or by nonrenewal.

In the event of a proposed termination for cause, the holder of a performance contract shall be entitled to a grievance pursuant to the DGBA series.

In the event of a proposed termination without cause, the holder of a performance contract is not eligible for a hearing but, based on the contract specifications, is entitled to a contractually established buyout amount. In the alternative, the holder of a performance contract may be reassigned to another administrative or classroom position in accordance with contractually established terms.

Contract nonrenewal does not entitle a holder of a performance contract to a nonrenewal hearing because employees on such contracts have waived those rights.

Noncontract Employment

A professional educator who accepts a position that does not require certification, or is not statutorily entitled to a contract, must relinquish his or her contract and accept employment under the terms and conditions of the noncontract employment relationship. [See DCD(LEGAL) and (LOCAL)]

Minimum Salary Schedule — Educators

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

Definitions

Classroom Teacher

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

Librarian

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

School Counselor

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

Nurse

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

Full-Time

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

19 TAC 153.1022(a)

Placement on Salary Schedule

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

Employees Formerly on Career Ladder

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

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

Pay Increases

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

Public Hearing — Contract Employees

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

The board must state the following at the public hearing:

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

Local Gov't Code 180.007

Severance Pay

A district that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an employee must include:

1. A requirement that severance pay that is paid from public money may not exceed the amount of compensation, at the rate at the termination of employment or the contract, the employee would have been paid for 20 weeks, excluding paid time off or accrued vacation leave; and
2. A prohibition of the provision of severance pay when the employee is terminated for misconduct.

Definitions

"Misconduct" means an act or omission by any employee of a political subdivision in the performance of the employee's duties that the school board determines to be misconduct. The term includes any finding of criminal conduct.

"Severance pay" means a dismissal or separation income paid on termination of the employment of an employee that is in addition to

the employee's usual earnings from the employer at the time of termination.

Website Posting — A political subdivision shall post each severance agreement in a prominent place on the political subdivision's internet website.

Application — These requirements apply to an action brought against a district by an employee of the district arising from the termination of the person's employment. A court may not issue a writ of execution or mandamus in connection with a judgment in the action if the judgment does not comply with this section.

Local Gov't Code 180.011 [For provisions related to severance agreements for independent contractors, see CJ.]

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

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

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

Annual Election — Each school year, an active employee must elect in writing whether to designate a portion of the employee's compensation to be used as health-care supplementation. The election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. *Education Code 22.105*

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

1. Is employed by a district;
2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);
3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insur-

ance) or Chapter 1601 (state university employee health insurance); and

4. Is not an individual performing personal services for the district as an independent contractor.

Education Code 22.101(2)

TRS Contributions for New Hires

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

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

On a monthly basis, a district shall:

1. Certify to TRS the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments under this section for the payroll periods; and

2. Retain information, as determined by TRS, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

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

Gov't Code 825.4041

TRS Surcharge for Rehired Retirees

TRS Fund Contributions

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

1. The current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and

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

Gov't Code 825.4092(b)

Health Insurance Contributions

In addition, each payroll period and for each rehired retiree who is enrolled in TRS Care (retiree group health insurance), a district shall contribute to the TRS Care trust fund an amount established by TRS. In determining the amount to be contributed by the district, TRS shall consider the amount a retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers. *Gov't Code 825.4092(c); Insurance Code 1575.204(b)*

Exception

A district is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005. *Gov't Code 825.4092(e)*

Notice Regarding Earned Income Tax Credit

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

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

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

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

Labor Code 104.001-.003

Decreasing Pay

The commissioner has held that a district may reduce educator compensation if it gives sufficient warning of a possible reduction in pay when educators can still unilaterally resign from their contracts. A sufficient warning must be both formal enough and specific enough to give educators a meaningful opportunity to decide whether to continue employment with a district. *Brajenovich v. Alief*

Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 021-R1O-1106 (2009)

Widespread Salary Reductions

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

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

Education Code 21.4032

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

Furlough Program

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

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

Funding Levels

Not later than July 1 of each year, the commissioner shall determine for each district whether the estimated amount of state and local funding per student in weighted average daily attendance to be provided to the district under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the district for the 2010-11 school year. If the amount estimated to be provided is less, the commissioner shall certify the percentage decrease in funding to be provided to the district. *Education Code 48.010*

Salaries

Notwithstanding Education Code 21.402 (minimum salary schedule), a board may reduce the salary of an employee who is furloughed in proportion to the number of days by which service is reduced. Any reduction in the amount of the annual salary must be

equally distributed over the course of the employee's current contract with the district.

Furlough Days A furlough program must subject all contract personnel to the same number of furlough days. An educator may not be furloughed on a day that is included in the number of days of instruction required under Education Code 25.081 [see EB]. Implementation of a furlough program may not result in an increase in the number of required teacher workdays. An educator may not use personal, sick, or any other paid leave while the educator is on a furlough.

Contract Resignation If a board adopts a furlough program after the date by which a teacher must give notice of resignation from a probationary, term, or continuing contract [see DFE], an employee who subsequently resigns is not subject to sanctions imposed by SBEC.

No Appeal A decision by a board to implement a furlough program is final and may not be appealed and does not create a cause of action or require collective bargaining.

Education Code 21.4021

Salary Reduction / Furlough Process A board may not implement a furlough program under Education Code 21.4021 or reduce salaries until the district has complied with the requirements below.

Employee Involvement A district must use a process to develop a furlough program or other salary reduction proposal, as applicable, that:

1. Includes the involvement of the district's professional staff; and
2. Provides district employees with the opportunity to express opinions regarding the furlough program or salary reduction proposal, as applicable, at the public meeting described below.

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

1. Information regarding the options considered for managing the district's available resources, including consideration of a tax rate increase and use of the district's available fund balance;
2. An explanation of how the district intends, through implementation of a furlough program or salary reductions, as applicable, to limit the number of district employees who will be discharged or whose contracts will not be renewed. Any explanation of a furlough program must state the specific number of furlough days proposed to be required; and

3. Information regarding the local option residence homestead exemption.

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

Education Code 21.4022

Compensation Plan

The Superintendent shall develop and recommend to the Board for adoption a pay system for all District personnel, which shall be incorporated into the *Compensation Plan*. This manual shall reflect all Board action related to employee salary or compensation.

The administration shall be responsible for developing procedures and guidelines for the proper implementation of the pay system for employees, as established in the *Compensation Plan*.

GENERAL DESCRIPTION

CLASSIFICATION COMMITTEE

1. The Classification Committee is composed of a representative from each area of administration, the compensation manager, and a principal from one of the five regions.

   Similarly structured committees may be appointed as needed for the various levels and categories of positions. The function of the committee is to review new positions and recommend appropriate pay grade designations for the positions. The committee also reviews existing positions to determine appropriate pay grade designations and possible reclassifications of the positions. The only time a position may be submitted for reclassification is when major changes have occurred in the responsibilities and duties assigned to that position; however, the Classification Committee will review during the spring of each year at least five percent of the administrative positions in order to determine whether any major changes of duties and responsibilities have occurred that would indicate that full review is needed for those positions. The chief academic officer and the assistant superintendent, School Support Services, are responsible for identifying the positions for review by the Classification Committee.

MEMBERSHIP

2. The members of the Classification Committee are appointed by the Superintendent. The current membership is as follows:

   - Executive General Manager, Human Resources, Chairperson;
   - Chief Academic Officer;
   - Chief Financial Officer;
   - Chief of Staff;
   - Chief Operations Officer;
   - Compensation Manager; and
   - Principal (TBA).

   The compensation manager serves as secretary to the committee.

SENIOR COMPENSATION ANALYST RESPONSIBILITIES

3. The senior compensation analyst, Human Resources, serves as coordinator of the total classification system, provides all necessary forms, and assists upon request in the development of all required documents.

OPERATING PROCEDURES

MEETINGS

4. The operating procedures for the committee are as follows:

   a. Meetings are held each spring.

AGENDA

b. The manager, Compensation, is responsible for preparing the agenda.

RECORDS

c. A record of all decisions and significant discussion items is maintained by the manager, Compensation.

DECISIONS

d. Decisions are based on review of classification decisions in accordance with committee and senior administrator directives.

CONSULTATION

5. This regulation has been through consultation (Administrative: March 6, 2007; Instructional: March 6, 2007).

MAINTENANCE RESPONSIBILITY

6. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

SALARY SCHEDULE PLACEMENT

1. Employees are placed on the appropriate salary schedule and salaries are determined by Human Resources generalist in accordance with the District's Compensation Manual. See References (a) and (c). Exceptions to this practice require approval of the Superintendent.

PROCEDURE

2. The procedure for requesting a salary placement exception is as follows:

INITIATING A REQUEST

a. If an employee's immediate supervisor believes the calculated salary is not appropriate, he or she may initiate a request for an exception to the standard. See References (a) and (b). The immediate supervisor sends the request to the appropriate District superintendent or direct report to the Superintendent who forwards the request to the executive general manager, Human Resources. The request must include justification for a salary other than the one established in the District's Compensation Manual. See Reference (c).

PROCESSING BY HUMAN RESOURCES

b. Upon receipt of a request for a salary placement exception, the appropriate Human Resources generalist prepares the Administrator/Special Placement Assignment form, and forwards it to the executive general manager, Human Resources. See Reference (d).

SUBMITTING THE REQUEST TO THE DIRECT REPORTS SALARY COMMITTEE

c. The executive general manager, Human Resources, presents the Administrator/Special Placement Assignment form to the Direct Reports Salary Committee for a recommendation to the Superintendent. See References (b) and (c).

SUBMITTING THE REQUEST TO THE SUPERINTENDENT

d. After receiving a recommendation from the Direct Reports Salary Committee, the executive general manager, Human Resources, submits the form to the Superintendent for approval.

SUBMITTING THE REQUEST TO THE BOARD OF EDUCATION

e. If the requested salary is above the appropriate range maximum, the Superintendent presents the request to the Board of Education at its regular monthly meeting for its approval of the salary placement exception request. See Reference (b).

IMPLEMENTING AN APPROVAL REQUEST

f. After the request is approved by the Superintendent and the Board of Education, Human Resources initiates the salary change and notifies the employee and his or her supervisor.

CONSULTATION

3. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

4. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DEA(LEGAL)

(b) DEA(EXHIBIT)

(c) HISD Compensation Manual 2001–2002

(d) Form – Administrator/Special Placement

HOURLY OR PART-TIME EMPLOYEES

1. For the purpose of this regulation, the following definitions will apply.

HOURLY EMPLOYEE

a. An hourly employee is a part-time employee who is paid an hourly rate as opposed to a monthly salary. The hourly employee position is not eligible for benefits, leave time, or service recognition. There are two types of hourly employees:

REGULAR HOURLY EMPLOYEE

(1) A regular hourly employee is one who works as scheduled by his supervisor and averages less than 20 hours per week.

TEMPORARY OR SEASONAL HOURLY EMPLOYEE

(2) There are two categories of temporary or seasonal hourly employees. One is a temporary or seasonal employee who works less than 20 hours per week for a specified time as determined by the supervisor. The other is one who may work up to 40 hours per week but may not exceed a total of four months employment from August to July.

Associate teachers, bus drivers and aides, and Food Services substitute hourly employees are exempt from the hours-worked restrictions outlined at REGULAR HOURLY EMPLOYEE and TEMPORARY OR SEASONAL HOURLY EMPLOYEE, above.

REGULAR PART-TIME EMPLOYEE

b. A regular part-time employee is an hourly employee who works a minimum of 20 hours per week and does not exceed 32 hours per week. The employee is eligible for prorated state and local leave days, benefits, and recognition of service with the Houston Independent School District. Employees in this category work fewer than 12 months per year.

REGULAR STATUS EMPLOYEE

c. A regular status employee is scheduled to work more than 32 hours per week, can work up to 12 months per year, is compensated with a salary, receives benefits and leave time, and is eligible for service recognition. See Reference (a).

MONITORING HOURLY EMPLOYEE

2. Managers and supervisors are responsible for monitoring hourly and part-time employee schedules and hiring according to the categories outlined. A regular temporary or seasonal part-time employee who works beyond the established guidelines will be identified by Human Resources and Budgeting and reviewed for possible placement in a regular status position. The actual percent of full-time equivalency (FTE) will

be based on the hours worked per week by the employee as designated by the supervisor.

CHANGING EMPLOYMENT STATUS

3. Procedures for changing an employee's employment status from an hourly or part-time employee to a regular employee are as follows:

REVIEW OF PAYROLL RECORDS

a. Every October and March, Human Resources and Budgeting review the payroll records of all hourly and part-time employees for any patterns of hours worked beyond the approved schedules.

APPROVED WORKING HOURS

b. A report identifying an employee who worked beyond his or her approved work hours is submitted to the appropriate direct report to the Superintendent for review.

APPROVED REGULAR EMPLOYEE STATUS

c. If an employee is eligible for regular employee status, Human Resources notifies the direct report to the Superintendent, or designee, to obtain approval and funding.

FUNDING

d. The direct report to the Superintendent has 30 calendar days to obtain funding from either the school or department budget for the equivalent regular status position or request an extension from the Superintendent for the employee to remain in an hourly or part-time position.

EXTENSION

e. Any direct report to the Superintendent can make a one-time request for a three-month extension for the employee to continue working hourly.

HIRING HOURLY LECTURERS

f. Guidelines described in this regulation will apply to hiring hourly lecturers starting in the 2010-11 school year.

CONSULTATION

4. This regulation has been through consultation (Administrative: September 3, 2009; Instructional: September 3, 2009; Noninstructional: August 11, 2009).

MAINTENANCE RESPONSIBILITY

5. The deputy superintendent for human talent, Human Resources, is responsible for maintenance of this regulation.

REFERENCE:

(a) *HISD Compensation Manual*

APPROVAL FOR SPECIAL SALARY PLACEMENTS

This exhibit concerns the processing of exceptions to the salary placement standard. This approval process is exercised as needed.

SALARY

Responsible Party	Level of Authority	Requirements and Other Information
Houston Independent School District Board of Education	Salaries above the Position Salary Range	
Superintendent	Special salary placement	The Superintendent approves requests for salary placement of the applicant Regional Superintendent's salary recommendation and Direct Reports Salary Committee's recommendation for special salary placement
Direct Reports Salary Committee	Recommendation of special salary placement to Superintendent	
Chief Human Resources Officer	Recommendation of special salary placement to the Direct Reports Salary Committee	Human Resources forwards the Regional Superintendent's salary recommendation to the director, Compensation, to determine a salary based on the HISD Compensation Manual The chief Human Resources officer submits the Administrator/Special Placement Assignment form to the Direct Reports Salary Committee The chief Human Resources officer submits the salary recommendation to the Superintendent of Schools
Senior Manager, Professional Standards	Determination of salary Recommendation to Chief Human Resources Officer	

From the appropriate area of responsibility: Regional Superintendents School Principals Superintendent and Superintendent's Cabinet	Recommendation of salary placement exception to the Chief Human Resources Officer	
From the appropriate area of responsibility: School Principals Administrative department head	Submission of salary placement exception request	

SELECTION

Responsible Party	**Level of Authority**	**Requirements and Other Information**
Chief Human Resources Officer	Screen applicants for minimum job requirements	Application and resume of a qualified applicant Request for an exception to the standard

1. References.

   DEA2(REGULATION)

2. The chief human resources officer, Human Resources, is responsible for maintenance of this exhibit.

Incentive Grants — Contract Provision

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

Educator Excellence Innovation Program

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

Eligibility

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

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

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

Local Plan

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

A district must act pursuant to its local board policy [see DEAA (LOCAL)] for submitting a local educator excellence innovation plan and grant application to TEA. A local decision to approve and

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

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

Use of Grant Funds

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

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

Waiver Request

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

The application for the waiver must demonstrate:

1. Why waiving the identified section of the Education Code is necessary to carry out the purposes of the program;

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

3. Approval for the waiver by a vote of a majority of the educators employed at each campus for which the waiver is sought; and

4. Evidence that the voting occurred during the school year and in a manner that ensured that all educators entitled to vote had a reasonable opportunity to participate in the voting.

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

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

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

Local Optional Teacher Designation System

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

Commissioner's Rules

The commissioner's rules specify the requirements for districts to implement local teacher designation systems, including:

1. Teacher eligibility;

2. Application procedures and approval process;

3. System expansion, spending modifications, and changes;

4. Monitoring and annual program submission of approved local designation systems;

5. Continuing approval and renewal; and

6. Funding.

19 TAC 150.1012

Standards

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

1. Must provide a mathematical possibility that all teachers eligible for a designation may earn the designation; and

2. May not require a district to use an assessment instrument adopted under Education Code 39.023 to evaluate teacher performance.

Education Code 21.3521(b); 19 TAC 150.1014

Teacher Incentive Allotment

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

A district shall annually certify that:

1. Funds received were used as follows:

    a. At least 90 percent was used for the compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed; and

    b. Any other funds were used for costs associated with implementing the local optional teacher designation system, including efforts to support teachers in obtaining designations; and

2. The district prioritized high needs campuses in the district in using funds.

Education Code 48.112(c), (i)

Nationally Board Certified Designation

A classroom teacher that holds a National Board Certification issued by the National Board for Professional Teaching Standards may be designated as nationally board certified in accordance with the commissioner's rules for eligibility. This designation is valid for a five-year period, regardless of whether the State Board for Educator Certification (SBEC) revokes authorization for a nationally board certified teacher designation. *Education Code 21.3521(c)-(c-1); 19 TAC 150.1013*

Enhanced Teacher Incentive Allotment Systems

Each school year, the commissioner shall, using criteria developed by the commissioner, designate as enhanced teacher incentive allotment system school districts that implement comprehensive school evaluation and support systems. The criteria developed by the commissioner must require a district to:

1. For principals and assistant principals, implement:

    a. A strategic evaluations system aligned with the district's or school's teacher designation system; and

    b. A comprehensive system based on performance;

2. Ensure that under the district's teacher designation system substantially all classroom teachers, regardless of the grade level or subject area to which the teacher is assigned, are eligible to earn a designation under Education Code 21.3521(a);

3. Implement for all classroom teachers a compensation plan based on performance that:

   a. Uses a salary schedule that differentiates among classroom teachers based on staff appraisals; and

   b. Does not include across-the-board salary increases for classroom teachers except for periodic changes to the district's or school's salary schedule to adjust for significant inflation and;

4. Implement a locally designed plan to place highly effective teachers at high needs campuses and in accordance with Education Code 28.0062(a)(3).

The commissioner may designate a school district as an enhanced teacher incentive allotment system only if the district has implemented a local optional teacher designation system under Education Code 21.3521.

The commissioner may remove a school district's designation as an enhanced teacher incentive allotment system if the commissioner determines the district no longer meets the criteria for the designation.

Education Code 21.3521(d-1)-(d-3)

For a district that is designated as an enhanced teacher incentive allotment system under Education Code 21.5321(d-1), the commissioner shall increase the amount to which the district is entitled under Education Code 48.112 by multiplying that amount by 1.1. *Education Code 48.112(g-1)*

For a district whose allotment increased under Education Code 48.112(g-1), the district must annually certify the amount by which the allotment was increased under Education Code 48.112(g-1) was used to meet the criteria to maintain a designation as an enhanced teacher incentive allotment system under Education Code 21.3521(d-1). *Education Code 48.112(i)(B)*

Technical Assistance from TEA

TEA shall develop and provide technical assistance for districts that request assistance in implementing a local optional teacher designation system listed in Education Code 21.3521(e). *Education Code 21.3521(e)*

	From funds appropriated or otherwise available for this purpose, TEA shall establish and administer a grant program to provide money and technical assistance as described in law. *Education Code 21.3522*
No Property Right	A teacher has no vested property right in a teacher designation assigned under a local optional teacher designation system. A teacher designation is void in the determination that the designation was issued improperly, and the Administrative Procedure Act does not apply to the voiding of a local optional teacher designation. *Education Code 21.3521(f)*
Evaluations	TEA shall periodically conduct evaluations of the effectiveness of the local optional teacher designation systems and the teacher incentive allotment and report the results of the evaluations to the legislature. A district that has implemented a local optional teacher designation system or received funds under the teacher incentive allotment shall participate in the evaluations. *Education Code 21.3521(g)*
Teacher Retention Allotment	A school district is entitled to an annual allotment for each classroom teacher who is employed by or contracts with the district for which the allotment is provided as determined under Education Code 48.158(b). "Classroom teacher," for purposes of this allotment, is defined by Education Code 5.001, except the term also includes a person who is not required to hold a certificate under Subchapter B, Chapter 21 who otherwise meets the definition of classroom teacher under Education Code 5.001, and a person employed by an entity with which a school district has entered into a contract who otherwise meets the definition of a classroom teacher under Education Code 5.001. *Education Code 48.158(a)-(b)*
Use of Teacher Retention Allotment for 2025-26	For the 2025-26 school year, a school district shall use money received under the Teacher Retention Allotment to increase the salary provided to each classroom teacher for which the district is entitled to funding under the Teacher Retention Allotment for that year over the salary the teacher received or would have received if the teacher was employed by or contracted with the district in the 2024-25 school year by at least the amount received per classroom teacher under the Teacher Retention Allotment. *Education Code 48.158(c)(1)*

Use of Teacher Retention Allotment for 2026-27 and Beyond	For the 2026-27 and each subsequent school year, a school district shall use money received under the Teacher Retention Allotment to maintain the salary increases for classroom teachers provided under for the 2025-26 school year, above. Any additional funding generated for a school district under this section may only be used for the compensation of classroom teachers who are employed by or contract with the district and who have three or more years of experience. *Education Code 48.158(d)*
Use of Teacher Retention Allotment by Enhanced TIA Systems	For the 2025-26 school year, if the district is applying to be designated as an enhanced teacher incentive allotment system, the district shall use the money received for the Teacher Retention Allotment to increase the salaries of classroom teachers for the year based on performance. A school district that has been designated as an enhanced teacher incentive allotment system for the applicable school year may use money received under the Teacher Retention Allotment to provide salaries to classroom teachers in accordance with the district's compensation plan. *Education Code 48.158(c)(2), (e)*
Support Staff Retention Allotment	A school district is entitled to an annual allotment of $45 for each student in adjusted average attendance, as defined in Education Code 48.1581(b). For the 2025-26 school year, a district shall use this allotment to increase the salaries provided to non-administrative staff. For the 2026-27 and each subsequent school year, a district shall use this allotment to maintain these salary increases. Any additional money the district receives under this section may only be used for the compensation of non-administrative staff. *Education Code 48.1581(c)* "Non-administrative staff" includes a full-time or part-time employee who is not eligible for a salary increase from the Teacher Retention Allotment, above, including: a teacher not eligible for a salary increase under the Teacher Retention Allotment, above, a librarian, a school nurse, a teacher's assistant, a member of the custodial staff, a member of the food services staff, a bus driver, an administrative assistant, and other support staff. "Non-administrative staff" does not include a superintendent of a school district or other administrator serving as educational leader and chief executive officer, an assistant superintendent or a person in an equivalent role, a principal or assistant principal, or an employee in a centralized supervisory role. *Education Code 48.1581(a)*

Use of Staff Retention Allotment for 2025-26

For the 2025-26 school year, a school district shall use money received under Education Code 48.1581(c) to increase the salaries provided to non-administrative staff. *Education Code 48.1581(d)*

Use of Staff Retention Allotment for 2026-27 and Beyond

For the 2026-27 and each subsequent school year, a school district shall use money received under Education Code 48.1581(c) to maintain the salary increases provided under Education Code 48.1581(d). Any additional money the district receives under this section may only be used for the compensation of non-administrative staff. *Education Code 48.1581(e)*

Mentor Teachers

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

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

Education Code 21.458(a)

Commissioner's Rules

The commissioner's rules for receiving funds under the mentor program allotment specify the requirements for districts to implement a mentor training program, including:

1. Program requirements related to mentor selection, mentor assignment, training, roles and responsibilities, and meetings;
2. An application approval process;
3. Ongoing verification of compliance with program requirements;
4. Allowable expenditures; and
5. Program review through periodic reports.

19 TAC 153.1011

Assignment of Mentor

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

A school district shall assign a mentor teacher to a classroom teacher who has been issued a temporary certificate to teach ca-

reer and technology education under Education Code 21.0444 for at least two school years.

Education Code 21.458(a-1), (a-2)

Requirements for Mentor

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

1. Complete a research-based mentor and induction training program approved by the commissioner;
2. Complete a mentor training program provided by the district, which the district may allow to be satisfied by completing the commissioner's research-based mentor and induction training program above;
3. Have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance; and
4. Demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

Education Code 21.458(b)

Training

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

Mentoring Sessions

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

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

1. Orientation to the context, policies, and practices of the school district;
2. Data-driven instructional practices;

3. Specific instructional coaching cycles, including coaching regarding conferences between parents and the classroom teacher;

4. Professional development; and

5. Professional expectations.

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

A district must:

1. Designate a specific time during the regularly contracted school day for meetings between mentor teachers and classroom teachers assigned to a mentor; and

2. Schedule release time or a reduced teaching load for mentor teachers and classroom teachers under this section to facilitate mentoring activities, including classroom observations or participation in supportive coaching.

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

Achievement Academy Stipends

Literacy Achievement Academy

A classroom teacher who provides instruction to students in kindergarten through third grade and completes a literacy achievement academy is entitled to receive a stipend from the school district in the amount determined by the commissioner. A district may provide a stipend to a classroom teacher who provides instruction to students in a grade level above third grade. A stipend received under this subsection is not considered in determining whether a school district is paying the classroom teacher the minimum monthly salary under Education Code 21.402.

A school district is not required to provide a literacy achievement academy stipend to a classroom teacher if the teacher:

1. Attends the literacy achievement academy as part of an educator preparation program in which the teacher is enrolled;

2. Attends the literacy achievement academy on a day or during hours of service included in the term of the teacher's contract; or

3. Is not directed or approved by the school district at which the teacher is employed to attend the literacy achievement academy.

Education Code 21.4552(d), (d-1)

Mathematics Achievement Academy

A classroom teacher who completes a mathematics achievement academy is entitled to receive a stipend from the school district in the amount determined by the commissioner. A stipend received under this subsection is not considered in determining whether a district is paying the classroom teacher the minimum monthly salary under Education Code 21.402.

A school district is not required to provide a stipend under the mathematics achievement academy to a classroom teacher if the teacher:

1. Attends the mathematics achievement academy as part of an educator preparation program in which the teacher is enrolled;
2. Attends the mathematics achievement academy on a day or during hours of service included in the term of the teacher's contract; or
3. Is not directed or approved by the school district at which the teacher is employed to attend the mathematics achievement academy.

Education Code 21.4553(d), (d-1)

Post Secondary Career Counseling Academy Stipend

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

Autism Training

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

Retirement Incentives

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

Attendance Supplement

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

Stipend

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

Supplemental Duties

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

Incentive and Innovation Programs

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

Transformation of Policy Regarding Performance Pay and Differentiated Compensation

The District's greatest strength is its human capital. As such, high expectations are set for school leadership to inspire creative thinking and innovative approaches that lead to instructional and operational excellence. These expectations create an instructional context that acknowledges that the personal, face-to-face contact between teacher and student will always be the central event in education. Changes in the District's structure, governance, and policies underscore the importance of this relationship and must coalesce to create an organizational culture that values employees who are results-oriented, talented, innovative thinkers who strive to increase student achievement and contribute to the reformation of public education.

Also, human capital reform measures must focus on higher standards for recruitment and selection, job performance and compensation, and professional development and career planning and must provide employees a viable career path within the organization.

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

Fair Labor Standards Act

Minimum Wage and Overtime

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

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

Breaks for Nonexempt Employees

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

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

Compensatory Time

Accrual

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

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

Payment for Accrued Time

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

Use

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

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

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

Exempt Employees

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

Academic Administrators

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

1. Compensated on a salary or fee basis at the established weekly threshold, exclusive of board, lodging, or other facilities; or on a salary basis which is at least equal to the entrance salary for teachers in the district by which employed; and

2. Whose primary duty is performing administrative functions directly related to academic instruction or training in a district or department or subdivision thereof.

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

Employees engaged in academic administrative functions include:

1. The superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program;

2. The principal and any vice principals responsible for the operation of an elementary or secondary school;

3. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and

4. Other employees with similar responsibilities.

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

29 C.F.R. 541.204

Salary Basis

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

Partial-Day Deductions

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

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

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

29 C.F.R. 541.710

Safe Harbor Policy

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

tinuing to make improper deductions after receiving employee complaints.

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

29 C.F.R. 541.603(d)

Teachers

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

Exempt teachers include:

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

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

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

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

29 C.F.R. 541.303

Wage and Hour Records

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

Payday Law Exemption

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

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)

Option for Nonconcurrent Use of Family Medical Leave

The board shall adopt a policy that provides a classroom teacher employed by the district the option to elect not to take the teacher's paid personal leave concurrently with unpaid leave the teacher is entitled to take under the Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.) for an absence due to pregnancy or the birth or adoption of a child. *Education Code 21.418*

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

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

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

Jury Duty

An employee's accumulated personal leave may not be reduced because of the employee's service in compliance with a summons to appear as a juror [see DG]. *Education Code 22.006(c)*

Attendance at Truancy Hearing

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

Developmental Leaves of Absence

A board may grant a developmental leave of absence for study, research, travel, or other suitable purpose to an employee working in

a position requiring a permanent teaching certificate who has served in a district at least five consecutive school years.

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

An employee on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be an employee of a district for purposes of participating in programs, holding memberships, and receiving benefits afforded by employment in a district.

Education Code 21.452

Leave for Sick Foster Child

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

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

Labor Code 21.0595

Leave for Peace Officers

Quarantine Leave

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

A paid quarantine leave policy must:

1. Provide that a peace officer on paid quarantine leave receive:
    a. All employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits for the duration of the leave; and
    b. Reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation; and

2. Require that the leave be ordered by the person's supervisor or the district's health authority.

A district may not reduce a peace officer's sick leave balance, vacation leave balance, holiday leave balance, or other paid leave balance in connection with paid quarantine leave taken in accordance with the district's policy.

Local Gov't Code 180.009

Mental Health Leave

A district shall develop and adopt a policy allowing the use of mental health leave by peace officers and full-time telecommunicators authorized under Occupations Code 1701.405 employed by the district who experience a traumatic event in the scope of that employment.

The mental health leave policy must:

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

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

Gov't Code 614.015

Line of Duty Illness or Injury Leave

"Emergency medical services personnel" means a person described by Health and Safety Code 773.003, who is a paid employee of a district.

"Police officer" means a paid employee who is full-time, holds an officer license issued under Occupations Code Chapter 1701, and regularly serves in a professional law enforcement capacity in the police department of a district. The term includes the chief of the department.

Local Gov't Code 177A.001

A district shall provide to a police officer or emergency medical services personnel a leave of absence for an illness or injury related to the person's line of duty. The leave is with full pay for a period

commensurate with the nature of the line of duty illness or injury. If necessary, the district shall continue the leave for at least one year.

At the end of the leave of absence, the board may extend the leave of absence at full or reduced pay.

If the police officer or emergency medical services personnel is temporarily disabled by a line of duty injury or illness and the leave of absence and any extension granted by the board has expired, the person may use accumulated sick leave, vacation time, and other accrued benefits before the person is placed on temporary leave.

If the leave of absence and any extension granted by the board has expired, a police officer or emergency medical services personnel who requires additional leave shall be placed on temporary leave.

Local Gov't Code 177A.003

If able, a police officer or emergency medical services personnel may return to light duty while recovering from a temporary disability. If medically necessary, the light duty assignment may continue for at least one year.

After recovery from a temporary disability, a police officer or emergency medical services personnel shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another police officer or emergency medical services personnel may voluntarily do the work of the injured person until the person returns to duty.

Local Gov't Code 177A.004

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., No. 4:99-CV-987-E, 2001 WL 196969 (N.D. Tex. Feb. 26, 2001) (Family and Medical Leave Act case); Specialty Retailers v. DeMoranville, 933 S.W.2d 490 (Tex. 1996) (age discrimination case); Cont'l Coffee Prods. Co. v. Cazarez, 937 S.W.2d 444 (Tex. 1996) (workers' compensation claim); Gonzalez v. El Paso Nat. Gas Co., No. EP-81-CA-323, 1986 WL 4796 (W.D. Tex. Mar. 5, 1986) (sex discrimination case)*

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

Daily Rate of Pay The employment policy must provide how to compute the daily rate of pay for purposes of determining the amount of a reduction in the salary of a classroom teacher, full-time counselor, or full-time librarian for unpaid leave. *Education Code 11.1513(l)* [See DC]

Leave Administration

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

Definitions

The term immediate family is defined as:

Immediate Family

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

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

Family Emergency

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

Leave Day

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

School Year

A school year for purposes of earning, using, or recording leave shall mean the term of the employee's annual employment as set by the District for the employee's usual assignment, whether full-time or part-time.

Daily Rate of Pay

The daily rate of a contract employee, including a teacher, school counselor, or librarian, shall be computed by dividing the employee's annual salary by the number of duty days in the employee's contract year.

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

Availability

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

Leave Proration

If an employee separates from employment with the District before their last duty day of the school year or begins employment after the first duty day of the school year, all personal leave shall be prorated based on the actual time employed.

If an employee separates from employment before the last duty day of the school year, the employee's final paycheck shall be reduced for any personal leave the employee used beyond their pro rata entitlement for the school year.

State Personal Leave

The District has established a state personal leave program consisting of five days of paid leave annually, as required by law. [See DEC(LEGAL)]

Local Personal Leave

Each employee shall earn five, six, or seven paid local personal leave days per school year based on months of service and in accordance with administrative regulations.

Local personal leave shall be used for personal illness, illness of an immediate family member, death in the immediate family, or family emergency. Up to three days of paid leave per year may be used for personal business.

An employee may contribute local leave to the Supplemental Sick Leave Bank in accordance with this policy.

Local personal leave shall accumulate without limit.

Use of Leave

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

Nondiscretionary Use

Nondiscretionary use of leave shall be for the same reasons and in the same manner as state sick leave. [See DEC(LEGAL)]

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

Discretionary Use

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

Request for Leave

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

Discretionary use of state personal leave and/or local leave shall not exceed two consecutive workdays.

Medical Certification

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

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

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

Bereavement Leave

Each full-time, benefits-eligible employee shall be granted three days of bereavement leave, per occurrence, upon the death of a spouse, parent, current parent-in-law, child, sibling, grandparent, grandchild, or any other person residing in the employee's home at the time of death. Such leave shall be taken with no loss of pay or other paid leave.

Bereavement leave shall be taken within 30 days of the date of death, unless otherwise approved by the employee's supervisor to accommodate extenuating or logistical circumstances.

Additional days in excess of the three days, or leave for other circumstances not covered by this provision, shall be deducted from the employee's accrued leave.

For benefits-eligible, hourly employees, the hours granted for each day of bereavement leave will be based on the employee's planned working time.

The District may require reasonable documentation to verify the need for bereavement leave. Acceptable documentation may include, but is not limited to, an obituary, funeral or memorial service program, or other appropriate verification. Documentation should be provided within a reasonable timeframe upon the employee's return to work.

Peace Officers

Quarantine Leave

Notwithstanding the above, a District peace officer shall be granted five days of quarantine leave when ordered by the local health authority or supervisor to quarantine or isolate due to possible known exposure to a communicable disease while on duty.

Mental Health Leave	A District peace officer or a full-time licensed telecommunicator (e.g., a police dispatcher) who experiences a traumatic event in the scope of employment will be granted a maximum of five days of mental health leave per traumatic event. The amount of leave time necessary is determined by the chief of police or designee.
Extended Leave for Illness or Injury	For a District peace officer who experiences an illness or injury related to their line of duty and who, following the required leave of absence with full pay for a period commensurate with the nature of the illness or injury as required by law, is unable to return to work, the District shall extend the leave of absence, not to exceed two years, with no loss of pay.
Supplemental Sick Leave Bank (SSLB)	The District shall establish a Supplemental Sick Leave Bank that employees may join through contribution of local leave. Leave contributed to the bank shall be solely for the use of participating employees. An employee who is a member of the bank may request leave from the bank if the employee experiences a catastrophic illness or injury and has exhausted all paid leave and any applicable compensatory time.
	Note: For implementation procedures for the SSLB, see DEC(REGULATION).
Family and Medical Leave	The District shall make FMLA leave available to employees in accordance with DECA(LEGAL) and the following provisions.
Concurrent Use of Paid Leave	FMLA leave shall run concurrently with applicable paid leave and compensatory time, as applicable, except as provided below.
Exception	A classroom teacher shall notify the appropriate administrator if they choose not to use paid leave concurrently with FMLA leave for an absence related to pregnancy or the birth or adoption of a child.
Twelve-Month Period	For purposes of an employee's entitlement to FMLA leave, the 12-month period shall be July 1 through June 30.
Combined Leave for Spouses	When both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 18 weeks.
Intermittent or Reduced Schedule Leave	The District shall permit use of intermittent or reduced schedule FMLA leave for the employee's own serious health condition or for the care of a family member with a serious health condition. The District shall not permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee.

Certification of Leave — When an employee requests leave, the employee shall provide certification, in accordance with FMLA regulations, of the need for leave.

Fitness-for-Duty Certification — In accordance with administrative regulations, when an employee takes FMLA leave due to the employee's own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification.

Leave at the End of Semester — When a teacher takes leave near the end of the semester, the District may require the teacher to continue leave until the end of the semester.

Temporary Disability Leave

Certified Employees — 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. [See DBB(LOCAL) for temporary disability leave placement and DEC(LEGAL) for return to active duty.]

Notification — An employee's notification of need for extended absence due to the employee's own medical condition shall be forwarded to the Superintendent or designee as a request for temporary disability leave.

Concurrent Use of Paid Leave — The District shall require the employee to use temporary disability leave and paid leave, including any compensatory time, concurrently with FMLA leave.

Workers' Compensation

Note: Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation of the District's contribution to health insurance.

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

Paid Leave Offset — The District shall permit the option for paid leave offset in conjunction with workers' compensation income benefits.

Professional Business — Short leaves with full pay may be granted to employees for visiting schools, for attending important professional meetings, or for carrying out some special assignments on recommendation of the department head and the Superintendent. An employee may be asked to file a written report. Each administrator may be allowed professional leave without salary deduction for attending national and state professional meetings, visiting schools, and attending other professional meetings, at their own expense, upon approval of the immediate supervisor and department head.

Procedures for authorization and reimbursement for a professional trip are outlined in the *Finance Procedures Manual.*

Board Meeting/ Professional Consultation

When meetings between the Board or designee and the representative organization are scheduled during normal working hours of a school day, the members shall be relieved, as necessary, from all regular duties without loss of pay in order to permit their attendance at such meetings.

Employment Dispute Resolution Meetings

When it is necessary for any party of interest to attend an employment dispute resolution meeting, they shall, upon notice, be released without loss of pay in order to permit participation in the foregoing activities. Any employee who appears as a witness in such investigation or meetings shall be accorded the same right. [See DGBA(LOCAL) and appropriate regulations]

Court Appearances

Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the District and shall not be deducted from the employee's pay or leave balance. Employees must provide appropriate documentation of attendance (e.g., court-issued verification) upon return to work.

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

Payment for Unused Leave

The 1972 Plan

An employee hired before October 10, 1972, who leaves employment with the District shall be eligible to receive payment for accumulated, unused paid leave if they:

1. Have been continuously employed by the District since initial employment; and
2. Have become eligible for retirement in accordance with the provisions of TRS.

An employee who meets all criteria shall receive payment for the unused portion of any accumulated, unused paid leave at their current daily rate of pay, not to exceed one-half of the contract year or the number of days available as of August 31, 1986, whichever is less.

If an employee dies while under contract, any accumulated personal leave benefits, not to exceed one-half of the contract year or the number of days available as of August 31, 1986, shall be paid to the estate of the deceased.

Exception Unless otherwise approved by the Board, an employee is not eligible for buy-back of unused state sick leave, state personal leave, and local leave if they:

1. Are terminated from employment with the District;
2. Resign or retire in lieu of termination or nonrenewal;
3. Are under investigation for a terminable offense (while the investigation continues); or
4. Are found guilty in an investigation for a terminable offense.

DEFINITIONS

1. For the purposes of this regulation, the following definitions will apply to assault leave.

ASSAULT

a. For the purpose of this regulation and as described in Chapter 6 (Culpability Generally) of Texas Penal Code, Title 2: General Principles of Criminal Responsibility, an assault is an intentional, knowing, or reckless action causing bodily injury to another person.

ASSAULT LEAVE

b. Any eligible employee who is physically injured during the performance of the employee's regular duties, as a result of what he or she believes is an assault, may request a leave of absence to recover from the physical injuries resulting from the alleged assault. The leave of absence can only be for the duration of recovery from the physical injury and cannot extend past two years from the date of the assault. [See DEC(LOCAL), DI(LOCAL), and Texas Education Code 22.003(b).]

REPORTING ASSAULT

2. The guidelines for reporting physical assault are as follows:

NOTIFICATION

a. An eligible employee may report a physical assault sustained during the performance of regular duties to the supervisor, principal, or site administrator. The supervisor or administrator, or designee, with the assistance of the employee, if possible, must complete the Employee Injury and Treatment (EIT) form upon receiving a report of an assault. [See Houston Independent School District Employee Injury and Treatment form.] The supervisor or administrator must immediately forward a copy of the EIT form to Workers' Compensation and report the alleged assault to the District police department, if appropriate.

MEDICAL ATTENTION

b. In the event of injury, the employee will seek medical attention with a Workers' Compensation panel physician and/or other licensed medical provider.

ASSAULT LEAVE

3. An employee may request assault leave upon initial completion of the EIT form. [See paragraph 2.a.] If an employee does not request assault leave at this time, the employee may submit an amended EIT form to file for assault leave. The amended form must be completed and sent to Workers' Compensation within 30 calendar days from the date of the alleged assault.

TEMPORARY ASSAULT LEAVE

a. The initial assignment to assault leave is temporary while awaiting the investigation and confirmation that a physical injury occurred while in the course and scope of

employment and due to an assault. [See DGBA(LOCAL)]

INITIAL RECORD OF LEAVE

b. Beginning with the injured employee's first day of absence, the employee's time must be coded to reflect ASALT (assault leave). The timekeeper must code time as assault leave until advised otherwise by Workers' Compensation.

MEDICAL TREATMENT

c. The injured employee will take the original EIT form to the Workers' Compensation panel physician authorizing medical treatment. [See Houston Independent School District Employee Injury and Treatment form.] Following medical treatment, the Workers' Compensation panel physician provides a completed DWC Form 73-Work Status Report to the employee and Workers' and Unemployment Compensation. The employee is also responsible for forwarding any and all DWC 73-Work Status Reports to Workers' and Unemployment Compensation.

INVESTIGATION

4. Upon receipt of the assault leave request and the DWC 73-Work Status Report, Workers' and Unemployment Compensation sends an investigation request notice to the principal, supervisor, or site administrator along with the Assault Leave Investigation form.

WORK LOCATION INVESTIGATION

a. The principal, supervisor, or site administrator is responsible for conducting the investigation of the incident, utilizing the Assault Leave Investigation form. [See Assault Leave Investigation form.] The principal, supervisor, or site administrator will seek to obtain statements from the injured employee, the alleged assailant, and witnesses. The principal, supervisor, or site administrator will send the investigation report to Workers' and Unemployment Compensation within five business days of the request for assault leave.

POLICE REPORT

b. Where appropriate and applicable, a police report will be completed and forwarded to Workers' and Unemployment Compensation within five days of the request for assault leave. The principal, supervisor, or site administrator is responsible for providing Workers' and Unemployment Compensation with the incident number when the District police department is involved.

FALSE REPORT

c. An employee will not knowingly file a false police report. A person commits an offense if, with intent to deceive, he or she knowingly makes a false statement that is ma-

terial to a criminal investigation and makes this statement to:

- A peace officer conducting the investigation; or
- Any employee of a law enforcement agency that is authorized by the agency to conduct the investigation, and that the employee knows is conducting the investigation. [See Texas Penal Code, Chapter 37]

WORKERS' COMPENSATION REVIEW

d. Workers' and Unemployment Compensation will review the completed Assault Leave Investigation form and the medical documentation and present the information to the District's Assault Leave Committee for a decision regarding assault leave.

ASSAULT LEAVE COMMITTEE

5. The Assault Leave Committee will include the following members: a Human Resources business partner; the general manager, Benefits; a District EEO representative; a District Legal Services representative; the manager or senior manager, Workers' Compensation; and the Assault Leave administrator or assigned designee.

DECISION OF ASSAULT LEAVE COMMITTEE

a. Based on the findings of the investigation, police report, medical treatment information, other information regarding the incident, and discussion with the principal, supervisor, or site administrator concerning his or her personal knowledge of the events of the incident, the Assault Leave Committee will approve or disapprove the assault leave request.

NOTIFICATION OF DECISION

b. Upon the decision of the Assault Leave Committee, the Workers' Compensation department will send a memorandum along with any pertinent forms and reports to the employee, the principal, supervisor, or site administrator, and Payroll Operations, notifying them of the approval or denial of the assault leave request.

PAYROLL REPORTING

6. If the results of the investigation do not support approval of the assault leave, the payroll transmittal must be adjusted to reflect Workers' Compensation or the employee's personal leave retroactive to the first date of absence in accordance with Section 5.b. of this regulation.

ADJUST EMPLOYEE ABSENCE

a. The Workers' Compensation department will notify Payroll Operations within 24 hours of the decision of approval or disapproval of assault leave. In the event that the assault leave has been disapproved, Payroll Operations will charge the employee's personal leave with

those days allocated for assault leave. In no event will an employee have more than 20 work days deducted from his or her accrued leave bank as a result of or due to the time it takes to make a decision to disapprove a request for assault leave.

COMBINED BENEFITS

b. Under no circumstances should the combined benefits of Workers' Compensation and assault leave exceed 100 percent of the employee's regular pay. The employee will reimburse the District for any overpayments.

APPEALS PROCESS

7. If the request for assault leave is initially denied, the employee will have 30 calendar days from the date of decision to dispute the denial. Disputes or appeals to a decision of the Assault Leave Committee should be made in writing and submitted to the Workers' Compensation department. Should the appeal for assault leave be approved, notification of the approval including all pertinent forms and reports will be copied and sent to the employee; the principal, supervisor, or site administrator; and Payroll Operations. In the event that an employee is not satisfied with the decision made on appeal, the employee may appeal the dispute to Level Two of the District's Formal Dispute Resolution Process. [See DGBA]

EMPLOYEE ASSISTANCE PROGRAM SERVICES

8. If the assault leave is approved, Workers' and Unemployment Compensation will advise the Employee Assistance Program (EAP) provider of the assault and request that a representative of the EAP contact the injured employee to offer EAP services. The EAP contact and services offered will be held in the strictest of confidence.

COORDINATION OF BENEFITS

9. Assault leave benefits will be coordinated with Workers' Compensation benefits. The District will supplement Workers' Compensation benefits to ensure that the injured employee receives 100 percent of his or her regular pay. Assault leave benefits may continue for a maximum of up to two years from the date of the assault on the condition that the employee provides a Medical Status Report every 30 days from his or her Workers' Compensation panel physician substantiating that the injured employee's physical medical condition prohibits his or her return to duty.

RETURN TO WORK

10. The guidelines for returning to work are as follows:

TEXAS DEPARTMENT OF INSURANCE

a. If the Texas Department of Insurance Division of Workers' Compensation (TDI-DWC) orders a medical examination by a state-appointed designated doctor and the designated doctor is instructed to address return-to-work status, the designated doctor's report has presumptive

weight and supersedes any and all other Workers' Compensation panel physicians. The employee's work status will be based on the date of receipt of the work status report if the work status report is retroactive. Should the designated doctor's decision be overturned by TDI-DWC, the injured employee's benefits will be reinstated retroactively.

CHANGE IN ELIGIBILITY

b. A change in eligibility for assault leave benefits may occur as a result of one of the following conditions:

- If at any point during the two-year maximum allowed recovery period from the date of assault, the employee is released to return to work, by either a Workers' Compensation panel physician or state-appointed designated doctor, with restrictions that are able to be accommodated by the District, the employee will no longer be eligible for assault leave benefits; or
- If the employee is no longer being treated for any physical injuries due to the assault, the employee is no longer eligible for assault leave benefits.

AMERICANS WITH DISABILITIES ACT (ADA) REFERRAL

c. If after the two-year maximum allowed recovery period from the date of physical injury from the assault the employee has not been released to return to work, the employee will no longer be eligible for assault leave benefits. However, the employee's Workers' Compensation panel physician or state-appointed designated doctor, whichever is applicable, may provide evidence to substantiate that the employee's current medical condition has degenerated as a result of the injury and that the employee cannot perform his or her essential job functions. The matter would then be referred to the ADA Accommodation Request Review Committee to determine whether reasonable accommodations can be made for the employee.

CONSULTATION

11. This regulation has been through consultation (Administrative: April 11, 2016; Instructional: April 6, 2016; Noninstructional: April 5, 2016).

MAINTENANCE RESPONSIBILITY

12. The chief financial officer, Finance, is responsible for the maintenance of this regulation.

EFFECTIVE DATE

13. This regulation shall be effective as of the adoption date, April 20, 2016.

BUSINESS AND CONSULTATION LEAVE

1. In order to encourage involvement and active participation in professional activities, the District allows employees to be absent with full pay for the purposes outlined below. See References (a) and (b). Any employee desiring such leave should submit a request to the appropriate superior (principal, department head, or supervisor) at least ten school days in advance of the pending absence and submit a written request on the Off Campus Duty form. See Reference (d). Such leave will not be charged against the employee's accumulated leave balance.

PROFESSIONAL BUSINESS

a. Short leaves with full pay may be granted to employees for visiting schools, for attending important professional meetings, or for carrying out some special assignment on recommendation of their department head and the Superintendent. The employee may be asked to file a written report. Each administrator may be allowed professional leave without salary deduction to attend national and state professional meetings, visit schools, and attend other professional meetings, at his or her own expense, upon approval of the administrator's immediate supervisor and department head.

   The District Board of Education will provide a budgeted amount for the costs of travel and per diem expenses of administrators who wish to attend national, state, and other professional meetings. Procedures for authorization of and reimbursement for a professional trip are outlined in Reference (c).

PROFESSIONAL CONSULTATION

b. When meetings between the Board of Education or its designee and a representative organization are scheduled during normal working hours of a school day, the members of the organization will be relieved, as necessary, from all regular duties without loss of pay in order to attend such meetings.

CONSULTATION

2. This regulation has been through consultation (Administrative: March 9, 2004; Instructional: February 5, 2004; Noninstructional: May 11, 2004).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DEC(LEGAL)

(b) Board Policy DEC(LOCAL)

(c) Finance Procedures Manual §200 Accounts Payable

(d) Form – Off Campus Duty

DISPUTE RESOLUTION LEAVE

1. When it is necessary for an employee to attend an employment dispute resolution meeting, he or she will, upon notice, be released without loss of pay in order to participate in the meeting. Any employee who appears as a witness in such a meeting will be accorded the same right. See Reference (a).

CONSULTATION

2. This regulation has been through consultation (Administrative: July 6, 2004; Instructional: July 1, 2004; Noninstructional: May 11, 2004).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for the maintenance of this regulation.

REFERENCE:

(a) Board Policy DEC(LOCAL)

COURT APPEARANCE

1. Employees subpoenaed for non-District mandatory court appearances as court witnesses may be absent without loss of pay provided a copy of the subpoena is submitted to the department's time recorder and maintained in the department's payroll files. Absences for court appearances related to an employee's personal business will be deducted from the employee's personal leave or taken by the employee as leave without pay. Practice regarding mandatory court appearances for District-related matters is described in References (a), (b), and (c).

CONSULTATION

2. This regulation has been through consultation (Administrative: May 11, 2006; Instructional: May 10, 2006; Noninstructional: May 9, 2006).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for the maintenance of this regulation.

REFERENCES:

(a) Board Policy DEC(LEGAL)

(b) Board Policy DEC(LOCAL)

(c) BDD(REGULATION)

Funeral Leave

Contract, regular, and probationary employees may be absent without loss of pay and without personal leave deduction in cases of the death of a spouse, parent, current parent-in-law, child, sibling, or any person residing in the employee's home at the time of death for a period not to exceed three days per occurrence. [See Board Policy DEC(LEGAL) and DEC(LOCAL)]

Additional days and all other funerals will be charged to the local personal leave balance for contract, regular, and probationary employees. A regular hourly employee may use personal leave days for a death in the employee's immediate family.

Maintenance Responsibility

The chief officer, Human Resources, is responsible for maintenance of this regulation.

Effective Date

This regulation is effective as of the adoption date, August 19, 2024.

JURY DUTY LEAVE

1. Employees called for jury duty may be absent without loss of pay subject to verification of the actual days served via the affidavit provided by the Shepherd of the Jury. If the employee is released from jury duty before noon, he or she must report to work. If jury duty is scheduled for noon or after, the employee must report to work in the morning.

MAINTENANCE RESPONSIBILITY

2. The deputy superintendent of human talent, Human Resources, is responsible for maintenance of this regulation.

REFERENCE:

(a) DEC8(REGULATION)

RESERVE MILITARY DUTY LEAVE

1. Members of the state military forces or members of any of the reserve components of the armed forces will be entitled to leave, not to exceed 15 workdays in any one federal fiscal year (July 1–June 30), from their duties without loss of time, efficiency rating, vacation time, or salary for all days during which they are engaged in authorized training or duty ordered or authorized by the proper authority. Leaves in excess of 15 workdays may be taken from the personal leave bank. See References (a) and (b).

CONSULTATION

2. This regulation has been through consultation (Administrative: August 13, 2001; Instructional: August 14, 2001; Noninstructional: November 15, 2001).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DEC(LEGAL)

(b) Board Policy DEC(LOCAL)

General Information

Comprehensive Leave Program

Comprehensive leaves are all leaves established for employees. The Comprehensive Leave Program of the Houston Independent School District (HISD) includes both compensated leave and unpaid leave privileges. The types of leaves that may be used by employees without loss of pay are described in DED(REGULATION), DEC2(REGULATION), DEC3(REGULATION), DEC4(REGULATION), DEC5(REGULATION), DEC6(REGULATION), DEC7(REGULATION), and DECA(REGULATION). The types of leave for which employees will not be paid are described in this regulation.

The District shall provide employees with five days per year of state personal leave. State personal leave days may be accumulated without restriction and may be used for any reason. However, an employee may not use more than 10 state personal leave days in one year except that the division superintendent may grant an exception to this provision upon request and in unique circumstances.

The District grants paid leave as set forth in the chart below. An employee shall accrue one day of paid leave per month of service to be credited at the beginning of each year. The first five days accrued shall be designated as state personal leave the remainder of days accrued shall be designated as local leave. The chart also designates other common leave types.

Types of Leave	Paid/ Unpaid	Number of Days Paid
State Personal Leave [See DEC(LEGAL)]	Paid	5 days per year
Local Personal Leave 10-month employees 11-month employees 12-month employees	Paid	 5 days per year 6 days per year 7 days per year
Temporary Disability All leave-eligible employees For full-time educators, temporary disability leave shall be in accordance with Education Code 21.409. Temporary disability leave may be granted to other District employees with limitations established in DEC(LOCAL).	Unpaid	180 calendar days

Types of Leave	Paid/ Unpaid	Number of Days Paid
Funeral Leave On the death of a spouse, parent, current parent-in-law, child, sibling, or other person residing in the employee's household	Paid	3 days per event
Vacation Leave For 12-month employees only	Paid	Up to 4 weeks or per contract
Family Medical Leave [See DECA(REG)]	Unpaid	Up to 12 weeks
Military Leave	Unpaid	Not to exceed 4 years, depending on military orders.

Use of Leave

In deciding whether to approve or deny a request for discretionary use of state personal leave and/or local leave, the supervisor shall not seek or consider the reasons for which an employee requests to use leave. The supervisor shall, however, consider the duration of the requested absence in conjunction with the employee's absence from the educational program and District operations, as well as the availability of substitutes. Supervisors may also deny leave on days when there are already other absences that will impact the quality of instruction in the school.

An employee must get approval to take any number of leave days regardless of type. Employees in a school and considered to be staff members of the school must get approval from the school principal or acting principal. All other employees must receive approval to take leave from their supervisor at the director level. Failure to receive approval from the principal or supervisor may result in disciplinary action up to and including termination.

Employees must request leave at least two weeks in advance or as soon as possible. Failure to give adequate notice may impact whether the leave request is granted. In the event a request cannot be made prior to the person having to take leave (such as in the case of an unexpected illness) the employee must make every effort to inform their principal or director as soon as possible, including by phone.

Discretionary use of state personal leave and/or local leave shall not exceed two consecutive workdays. Principals and supervisors

will not approve requests for over two consecutive workdays. However, a division superintendent, chief officer, or designee, may approve such a request in unique and rare circumstances.

Discretionary use of leave shall not be permitted for employees who have exhausted state and local leave days. Employees may take advantage of specific types of leaves for which they are eligible as outlined in Policy DEC(LOCAL) and DEC(LEGAL), such as family medical leave, military leave, and temporary disability leave. Employees who qualify under the Americans with Disabilities Act (ADA) may receive additional time off if deemed a reasonable accommodation in compliance with the ADA.

The District will not allow "docked days" for exempt employees who have exhausted state and local leave and are absent beyond their allocation except as permitted by District board policy. An employee who is absent beyond their allocated number of days will be subject to disciplinary action up to and including dismissal. A docked day is when an employee is denied pay because the employee does not have sufficient leave time to cover an absence.

Regardless of the amount of leave in an employee's leave bank, no employee may be absent for more than 15 days of leave per fiscal year (July 1 through June 30), except as otherwise provided in policy. Employees who have not yet accrued 15 days may not use unpaid days and shall be subject to involuntary reassignment and/or disciplinary action up to and including termination once they exhaust all paid leave days.

Applicable to Campus Employees

Discretionary use of leave, including vacation days, shall not be permitted during or on:

- The first week of a new semester;
- The day before or after a school holiday or recess day;
- Days scheduled for end-of-semester or end-of-year exams or during days scheduled for exams that are administered across the feeder pattern, unit, or division;
- Days scheduled for state-mandated assessments;
- Professional or staff development days.

Unpaid Leave

A leave of absence without pay for a period not to exceed one year may be granted to a continuing contract professional or regular noninstructional employee upon approval of the division superintendent or chief. Such leaves may be extended upon the recommendation of the chief officer, Human Resources, and the approval of the Superintendent. When an unpaid leave has been taken, fail-

ure of the employee to notify Human Resources by April 1 of their intention to return the following fall term, or at least 60 days prior to the requested date of return, may be cause for termination of the contract of a professional educator, or for termination of employment of a noninstructional employee. Return from an unpaid leave will be on a position-available basis. One category of leave may not be used to extend any other category of leave.

Military Leave Other than Reserve Military Duty Leave

An employee who is inducted or called up for military duty in any branch of the Armed Forces of the United States will be granted a military leave of absence. Upon return from such leave, an employee will be placed in the same position on the salary schedule they would have occupied if employed in the District during said period, provided the military leave does not exceed four years and the employee returns directly to HISD from military service.

Political Leave

Upon application, a leave of absence not to exceed four years will be granted to any employee for the purpose of seeking or, if elected, serving in a public office.

Developmental Leave

An employee may be granted a leave for one year for the purpose of engaging in a study designed to improve the employee's professional competence if approved by the division superintendent or chief. Such a leave request must be accompanied by a statement describing how the leave is designed to improve professional competence. A study leave will be effective at the beginning of the semester following the date of request. Upon request, such leave may be extended for one additional year.

Retirement System Credit

An employee with five years of service with the Teacher Retirement System (TRS) may purchase up to two years of credit for developmental leave. The employee must notify the TRS in advance of their intention to take such leave, having the District certify that the leave request will meet the requirements of improving the employee's professional competency and make the appropriate deposit with the TRS.

Return to Duty

The request for a return to duty must be accompanied by a transcript from an accredited college or university or other documentation indicating the accomplishment of the purpose for the leave.

Peace Officers

Quarantine Leave

Notwithstanding the above, a District peace officer shall be granted 5 days of quarantine leave when ordered by the local health authority or supervisor to quarantine or isolate due to possible known exposure to a communicable disease while on duty.

Mental Health Leave

A District peace officer or a full-time licensed telecommunicator (e.g., a police dispatcher) who experiences a traumatic event in the scope of employment will be granted a maximum of five days of

mental health leave per traumatic event. The amount of leave time necessary is determined by the chief of police or designee.

Extended Leave for Illness or Injury

For a District peace officer who experiences an illness or injury related to their line of duty and who, following the required leave of absence with full pay for a period commensurate with the nature of the illness or injury as required by law, is unable to return to work, the District shall extend the leave of absence, not to exceed two years, with no loss of pay.

Administrative Internship Program

The purpose of the HISD internship program is to increase the quality of teaching and administration within the District. On-the-job-experience for one semester provides enriching and broadening experiences for the participants. In addition, administrators and teachers working on doctoral degrees must satisfy a required residence period in a university according to university policy. Teachers working on certification in administration or supervision in a state university must complete the internship prior to professional certification. HISD employees and doctoral students who are not HISD employees may apply. The doctoral student program is subject to HISD Board-approved funding.

Application Procedure for HISD Employees

The procedure for requesting an internship placement in HISD will be as follows:

1. The employee applies to their university advisor or program coordinator and requests permission to register for the required internship course offered by the university.
2. An HISD teacher seeking administrative certification and required by their university to complete an internship in a school or the central office may apply as follows:
    - The teacher contacts the District's manager, University Relations, to discuss the placement request;
    - The teacher requests permission from the university advisor or program coordinator to enter the internship program;
    - The teacher obtains verbal permission from their immediate supervisor to participate in the internship program;
    - The teacher identifies an administrator who is willing to supervise the activities to be performed and to assess the teacher;
    - The teacher completes the Internship Application and obtains the signatures from the university advisor or program coordinator and field supervisor's signatures. [See

the Houston Independent School District Internship Application]; and

- The teacher submits the request to the manager, University Relations, for approval.

3. The teacher will receive the approved application for distribution to the university advisor or program coordinator and field supervisor.

An employee must perform their regular duties within the school hours. A classroom teacher, at their discretion, can perform administrative duties during the off period.

Application Procedure for Nonemployee Doctoral Students

The procedure for entrance of a nonemployee doctoral student into the HISD Internship Program will be as follows:

1. The doctoral student requests that their university recommend them to the chief officer, Human Resources, for the internship.
2. The chief officer, Human Resources, obtains the name of the HISD administrator who agrees to supervise the applicant and notifies the manager, University Relations.
3. The manager, University Relations, notifies the university advisor or program coordinator of the approval and the name of the HISD administrator who will supervise the applicant.
4. All applicants who are not current employees of HISD must complete an Access to Police Records form and submit it with the application form at least two weeks prior to beginning the internship.

Maintenance Responsibility

The chief officer, Human Resources, is responsible for maintenance of this regulation.

Effective Date

This regulation is effective as of the adoption date, August 19, 2024.

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....2
Covered Employer....2
Eligible Employee....2
Qualifying Reasons for Leave....2
Definitions....3
Leave Entitlement and Use....5
Amount of Leave....5
Intermittent or Reduced Leave Schedule....6
Special Rules for Instructional Employees....7
Leave at the End of a Semester....8
Substitution of Paid Leave....9
Maintenance of Health Benefits....10
Right to Reinstatement....11
Notices and Medical Certification....12
Employer Notices....12
Employee Notice....14
Certification of Leave....15
Miscellaneous Provisions....18
Records....18

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

Amount of Leave

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

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

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

Determining the 12-Month Period

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

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

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 unusual 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 DAA]

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 regulations. A district must accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill service member at his or her bedside.

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 DAA(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*

Reasons for Taking Leave: FMLA

1. Under the Family and Medical Leave Act (FMLA) of 1993, up to 12 weeks of leave must be granted for any of the following reasons:

   - To care for the employee's child after birth, or placement for adoption or foster care;
   - To care for the employee's spouse, child, or parent who has a serious health condition; or
   - To care for a serious health condition that makes the employee unable to perform his or her job.

Eligibility

2. An employee is eligible if he or she has worked for the District for at least 12 months and for 1,250 hours during the previous 12 months. [See DECA(LEGAL)]

   Special "hours of service" requirements apply to airline flight crew employees.

Process

3. The employee may be required to provide advance leave notice and medical certification. Leave may be denied if requirements are not met.

   Notice

   a. The employee ordinarily must provide 30-day advance notice for an expected leave of absence. FMLA forms may be obtained from the appropriate human resources generalist, Human Resources, and must be returned no more than 15 calendar days from the first day of absence.

   Certification

   b. The Houston Independent School District (HISD) may require medical certification for the employee to support a request for leave because of a serious health condition. It is the employee's responsibility to ensure the medical documentation is complete and received by the appropriate HR generalist no later than the 15th calendar day from the first day of absence. HISD may require a second or third opinion at the District's expense.

   Return to Work

   c. The employee must provide the appropriate human resources generalist with a medical release certification statement to return to work. A return to work release must include any restrictions or limitations to performing the job.

Job Benefits and Protection

4. All employee benefits, health coverage, and job protection must remain in effect during an approved FMLA leave.

   Health Coverage

   a. For the duration of the FMLA leave, the employer must maintain the employee's health coverage under any

group health plan. The employee is responsible for paying his or her portion of the premiums.

Position

b. Upon return from the FMLA leave, an employee must be restored to his or her original or equivalent position with equivalent pay, benefits, and other employment terms.

Other Benefits

c. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of the employee's leave.

Concurrent Use of Leave

d. The District will require the use of all applicable state and local leave, personal leave, and vacation time, if available, the order to be determined by Board policy, followed by temporary disability leave, when applicable, concurrently with family and medical leave. An employee's family and medical leave entitlement will run concurrently with a workers' compensation absence if the injury is classified as a serious health condition.

Unlawful Acts by Employers

5. Under FMLA regulations, employers may not:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA; or
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Consultation

6. This regulation has been through consultation (Administrative: August 8, 2017; Instructional: October 5, 2017; and Noninstructional: August 8, 2017).

Maintenance Responsibility

7. The executive general manager, human resources, is responsible for maintenance of this regulation.

Effective Date

8. This regulation will be effective as of the adoption date, October 17, 2017.

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

Federal Military Leave

Reemployment

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services shall be entitled to certain reemployment rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301-4335, and its regulations at 20 C.F.R. Part 1002 if:

1. Unless notice is precluded by military necessity or is otherwise unreasonable or impossible, the person, or an appropriate officer of the uniformed service in which such service is performed, has given advance written or verbal notice of such service to such person's employer;

2. The cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years, calculated in accordance with 38 U.S.C. 4312(c); and

3. The person reports to or submits an application for reemployment to such employer in accordance with the provisions of 38 U.S.C. 4312(e) and (f) and 20 C.F.R. Part 1002, Subpart C.

38 U.S.C. 4312(a)-(c); 20 C.F.R. 1002.5(1)

For purposes of federal military leave, the term "uniformed services" means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; the commissioned officer corps of the National Oceanic and Atmospheric Administration (NOAA); system members of the National Urban Search and Rescue Response System during a period of appointment into federal service under Section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; intermittent personnel who are appointed into Federal Emergency Management Agency service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and any other category of persons designated by the president in time of war or emergency.

The term “service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; state active duty for a period of 14 days or more; state active duty in response to a national emergency declared by the president under the National Emergencies Act, 50 U.S.C. 1601 et seq.; state active duty in response to a major disaster declared by the president under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170; a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty; a period for which a system member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into federal service under Section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; a period for which a person is absent from a position of employment due to an appointment into service in the Federal Emergency Management Agency as intermittent personnel under section 306(b)(1) of the Robert B. Stafford Disaster Relief and Emergency Assistance Act; and a period for which a person is absent from employment for the purpose of performing funeral honors duty.

The term “state active duty” means training or other duty, other than inactive duty, performed by a member of the National Guard of a state not under 32 U.S.C. 502 or under U.S.C. Title 10; in service to the governor of a state; and for which the member is not entitled to pay from the federal government.

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

38 U.S.C. 4303(13), (15)-(16), 4316(a)

Exceptions

An employer, including a school district is not required to reemploy a person if:

1. The employer’s circumstances have so changed as to make reemployment impossible or unreasonable;

2. The person is entitled to reemployment under 38 U.S.C. 4313(a)(3), 4313(a)(4), or 4313(b)(2)(B), and the reemployment of the person would impose an undue hardship on the employer; or

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

38 U.S.C. 4312(d)

A person's entitlement to the benefits of 38 U.S.C. Chapter 43 by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

1. A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.

2. A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the U.S. secretary concerned.

3. A dismissal of such person permitted under or a dropping of such person from the rolls pursuant to 10 U.S.C. 1161(a) (dismissal of commissioned officers).

38 U.S.C. 4304

Notice

Each employer shall provide to persons entitled to rights and benefits under 38 U.S.C. Chapter 43 a notice of the rights, benefits, and obligations of such persons and such employers. The requirement for the provision of notice may be met by the posting of the notice where employers customarily place notices for employees. The U.S. Secretary of Labor shall provide to employers the text of the notice. *38 U.S.C. 4334*

State Protections for Member of Military or Rescue Team

Paid Leave of Absence

A person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state, including a school district, who is a member of the state military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to a paid leave of absence from the person’s duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a fiscal year. During a leave of absence, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. *Gov’t Code 437.202(a)*

In addition to the leave provided under Government Code 437.202(a), a person described by Section 437.202(a) called to state active duty by the governor or another appropriate authority in response to a disaster is entitled to a paid leave of absence from

the person's duties for each day the person is called to active duty during the disaster, not to exceed seven workdays in a fiscal year. During a leave of absence under this provision, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. For purposes of this provision, "disaster" has the meaning assigned by Government Code 418.004. *Gov't Code 437.202(a-1)*

Notice

This state, a municipality, a county, or another political subdivision of this state, including a school district, shall provide written notice of the number of workdays of paid leave to which an officer or employee is entitled each fiscal year under Government Code 437.202(a) on employment, in the case of an employee, or as soon as practicable after appointment or election, in the case of an officer.

This state, a municipality, a county, or another political subdivision of this state, including a school district, shall, on the request of an officer or employee described by Government Code 437.202(a), provide to that officer or employee a statement that contains the number of workdays for which the officer or employee claimed paid leave under section 437.202(a) in that fiscal year.

Gov't Code 437.202(e)-(f)

Return to Employment

An employee of this state or a municipality, a county, or another political subdivision of this state with at least five full-time employees who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty. An employer, including a school district, may not terminate the employment of an employee who is a member of the military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment. *Gov't Code 437.202(d), .204(a)*

Reemployment

A public employee, other than a temporary employee, who leaves a state position or a position with a local governmental entity, including a school district, to enter active military service is entitled to be reemployed by the state or the local governmental entity in the same department, office, commission, or board of this state, a state institution, or local governmental entity in which the employee

was employed at the time of the induction, enlistment, or order, or to a position of similar seniority, status, and pay. To be entitled to reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary after the date of induction, enlistment, or call to active military service and must be physically and mentally qualified to perform the duties of the position.

"Military service" means service as a member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, the Texas National Guard, or the Texas State Guard.

Gov't Code 613.001(2)-(3), .002

Exception

A public employee who cannot perform the duties of the position because of a disability sustained during military service is entitled to reemployment in the department, office, commission, or board of the state, a state institution, or a local governmental entity in a position that the employee can perform and that has like seniority, status, and pay as the former position, or the nearest possible seniority, status, and pay. *Gov't Code 613.003*

Application

To be reemployed, a veteran must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service. The application must be made in writing to the head of the department, office, commission, or board of this state, the state institution, or the local governmental entity and have attached to it evidence of the veteran's discharge, separation, or release from military service under honorable conditions. *Gov't Code 613.004*

Discharge

A person reemployed under Government Code Chapter 613 shall not be discharged without cause before the first anniversary of the date of the reemployment. *Gov't Code 613.005*

Application of Federal Laws to Texas Military Members Called to Duty

A service member of the Texas military forces who is ordered to state active duty or to state training or other duty by the governor, the adjutant general, or another proper authority under the law of this state is entitled to the same benefits and protections provided to persons:

1. Performing service in the uniformed services as provided by 38 U.S.C. 4301-4313 and 4316-4319 (USERRA); and
2. In the military service of the United States as provided by 50 U.S.C. 3901-3959, 3991, and 4011-4026 (Servicemembers Civil Relief Act).

Gov't Code 437.213

Use of Personal Leave

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

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

Education Code 22.003(d), (e)

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

Withholding Information

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

Registry of Persons Not Eligible for Employment

A district shall discharge, or refuse to hire, or terminate, a person listed on TEA's registry of persons who are not eligible to be employed. [See DBAA] *Education Code 22A.151(b)*

Discharge of Convicted Employees

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

1. Convicted of or placed on deferred adjudication community supervision for:
    a. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62;
    b. An offense under Penal Code 21.12, Improper Relationship Between an Educator and a Student, or Penal Code 43.24, Sale, Distribution, or Display of Harmful Material to a Minor;
    c. A felony offense under Penal Code Chapter 43, Public Indecency;
    d. A felony offense involving school property; or
    e. An offense under the laws of another state or federal law that is equivalent to items a, b, c, or d; or
2. Convicted of:
    a. A felony under Title 5, Penal Code; or
    b. An offense under the laws of another state or federal law that is equivalent to an offense under item 2a, above.

Exception

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

1. The date of the offense is more than 30 years before the date the person's employment will begin; and

2. The employee satisfied all terms of the court order entered on conviction.

Education Code 22A.157(a)-(b), 22A.201(a) [See DBAA]

Certification to Commissioner

Each school year, a superintendent shall certify to the commissioner that the district has complied with the above provisions. *Education Code 22A.157(f)*

Sanctions

SBEC may impose a sanction on an educator who does not discharge an employee if the educator knows or should have known, through a criminal history record information review, that the employee has criminal history described in Discharge of Convicted Employees, above. *Education Code 22A.157(e)*

Termination for Failure to Disclose

A district may discharge an employee if the district obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to SBEC or the district. An employee so discharged is considered to have been discharged for misconduct for purposes of Labor Code 207.044 (unemployment compensation). *Education Code 22A.157(d)*

Certain Offenses Against Students

If a district receives notice that SBEC has revoked the certificate of a person based on the offenses listed at Discharge of Convicted Employees, the district shall:

Mandatory Termination

1. Immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and

2. For a person employed under a Chapter 21 probationary, continuing, or term contract, with the approval of the board or its designee:

    a. Suspend the person without pay;

    b. Provide the person with written notice that the person's contract is void [see Notice to Employee, below]; and

    c. Terminate the employment of the person as soon as practicable.

Education Code 22A.201(a), (c)

Discretionary Termination

If a district becomes aware that a person employed by the district under a probationary, continuing, or term contract under Chapter 21 has been convicted of or received deferred adjudication for a

felony offense, and the person is not subject to the mandatory termination provision above, the district may, with the approval of the board or its designee:

1. Suspend the person without pay;
2. Provide the person with written notice that the person's contract is void [see Notice to Employee, below]; and
3. Terminate the employment of the person as soon as practicable.

Education Code 22A.201(d)

Notice to Employee

A person's probationary, continuing, or term contract under Chapter 21 is void if, with the approval of the board or its designee, the district provides written notice to the person, under the mandatory or discretionary termination provisions above, that the person's contract is void. *Education Code 22A.201(e)*

No Appeal

Action taken by a district under the mandatory or discretionary terminations provisions above is not subject to appeal under Education Code Chapter 21 and the notice and hearing requirements of Chapter 21 do not apply to the action. *Education Code 22A.201(g)*

Invalid or Expired Certification

An employee's probationary, term, or continuing contract is void if the employee:

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

Education Code 21.0031(a)

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

1. The employee has completed the requirements for renewal of the certificate or permit;
2. The employee submitted the request for renewal before the expiration date; and

3. The date the certificate or permit would have expired is before the date SBEC takes action to approve the renewal of the certificate or permit.

Education Code 21.0031(f)

District's Options

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

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

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

Education Code 21.0031(b)

Exception

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

1. The employee requests an extension from SBEC to renew, extend, or otherwise validate the employee's certificate or permit; and
2. Not later than the 10th day after the date the contract is void, the employee takes necessary measures to renew, extend, or otherwise validate the employee's certificate or permit, as determined by SBEC.

Education Code 21.0031(b-1)

No Appeal or Chapter 21 Hearing

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

Applicability

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

Report to SBEC

A superintendent shall report the educator's termination to SBEC if the conditions set forth at Education Code 22A.051 exist. [See DHB]

Report to Superintendent

A principal shall report the educator's termination to the superintendent if the conditions set forth at Education Code 22A.051 exist. [See DPA]

Falsification of Military Record

A district may discharge an employee, regardless of whether the employee is employed under an employment contract, if the district determines, based on a reasonable factual basis, that the employee, in obtaining the employee's employment or any benefit relating to the employee's employment, falsified or otherwise misrepresented any information regarding the employee's military record in a manner that would constitute an offense under Penal Code 32.54.

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

Labor Code Ch. 105

Prohibition on Diversity, Equity, and Inclusion

A district shall adopt a policy and procedure for the appropriate discipline, including termination, of a district employee or contractor who intentionally or knowingly engages in or assigns to another person diversity, equity, and inclusion duties. The district shall provide a physical and electronic copy of the policy and procedure to each district employee or contractor.

The policy and procedure adopted by a district must ensure that an employee or contractor receives adequate due process and an opportunity to appeal disciplinary actions, including termination, in the same manner provided for other disciplinary actions. [See BT]

Education Code 11.005(c)-(d)

Prohibited Classroom Instruction

A district shall adopt a policy and procedure for the appropriate discipline, including termination, of a district or school employee or contractor who intentionally or knowingly engages in or assigns to another person an act prohibited by Education Code 28.0022 (Certain Instructional Requirements and Prohibitions). The district shall provide a physical and electronic copy of the policy and procedure to each district or school employee or contractor. [See EMB] *Education Code 28.0022(h)*

Board's Designee for Certain Termination Actions

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

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

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

Subsequent Contract

Only the Board can rescind a proposed nonrenewal and issue a subsequent contract to the impacted employee. Any issuance of a contract without Board approval is void.

PROBATIONARY CONTRACTS DFAA
SUSPENSION/TERMINATION DURING CONTRACT (LEGAL)

DISCHARGE

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

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

SUSPENSION

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

NOTICE

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

HEARING

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

EXCEPTION

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

Education Code 21.1041

Administrative Leave A probationary contract employee may be placed on administrative leave by the Superintendent during an investigation of any allegations or charges against the employee or at any time the Superintendent determines that the District's best interest will be served by the administrative leave.

Temporary Reassignment of an Employee — The Superintendent or designee may place an employee on administrative leave, which means the employee is temporarily reassigned from their regular duties, if the Superintendent or designee determines it is in the best interest of the District.

Subsequent Contract Only the Board can rescind a proposed nonrenewal and issue a subsequent contract to the impacted employee. Any issuance of a contract without Board approval is void.

PROBATIONARY CONTRACTS
TERMINATION AT END OF YEAR

DFAB
(LEGAL)

GROUNDS FOR TERMINATION

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

NOTICE

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

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

NO APPEAL

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

Education Code 21.103(a)

FAILURE TO NOTIFY

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

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

Education Code 21.103(b)

PROBATIONARY CONTRACTS
RETURN TO PROBATIONARY STATUS

DFAC
(LEGAL)

UPON CHANGE IN PROFESSIONAL CAPACITY

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

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

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

IN LIEU OF DISCHARGE, TERMINATION, OR NONRENEWAL

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

AFTER BOARD PROPOSAL

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

AFTER NOTICE FROM SUPERINTENDENT

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

NOTICE

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

Education Code 21.106(d)

NEW PROBATIONARY PERIOD

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

Suspension Without Pay

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

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

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

Education Code 21.211(b)

Back Pay

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

Grounds for Dismissal

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

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

Education Code 21.211(a)

Notice

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

Hearing

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

The parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing.

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

Financial Exigency

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the board in writing not later than the 10th day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term con-

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

Report by Principal

The principal of a district, including a district of innovation, must notify the superintendent not later than the seventh business day after the date of an educator's termination of employment following an alleged incident of misconduct described by Education Code 22A.051(a) or the principal knew about an educator's misconduct under Education Code 22A.051(a)(1), or not later than 48 hours after the principal becomes aware of evidence of misconduct described by Education Code 22A.051(a)(2)(A), (B), (C), or (D)(b)(1). *Education Code 22A.051(c); 19 TAC 249.14(e)* [See DPA]

Administrative Leave A term contract employee may be placed on administrative leave by the Superintendent or designee during an investigation of any allegations or charges against the employee or at any time the Superintendent determines that the District's best interest will be served by the administrative leave.

Temporary Reassignment of an Employee — The Superintendent or designee may place an employee on administrative leave, which means the employee is temporarily reassigned from their regular duties, if the Superintendent determines it is in the best interest of the District.

Reduction in Force — In accordance with state law, term contract employees may be released from employment by the District at the end of a school year because of necessary reduction of personnel.

Subsequent Contract Only the Board can rescind a proposed nonrenewal and issue a subsequent contract to the impacted employee. Any issuance of a contract without Board approval is void.

Grounds for Nonrenewal

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

Reasons

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

Evaluations

Before making a decision not to renew a term contract, the Board shall consider the most recent evaluations if the evaluations are relevant to the reason for the Board's action. *Education Code 21.203(a)*

In the case of a classroom teacher, the District shall use the teacher's consecutive appraisals from more than one year, if available, in making employment decisions. *Education Code 21.352(e)*

[See DNA and DNB]

Notice

Not later than the tenth day before the last day of instruction in a school year, the Board shall notify in writing each employee whose contract is about to expire whether the Board proposes to renew or not renew the contract.

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

Failure to Provide Timely Notice

The Board's failure to give timely notice of a proposed renewal or nonrenewal constitutes an election to employ the contract employee in the same professional capacity for the following school year.

Education Code 21.206

Request for Hearing

If the employee desires a hearing after receiving notice of the proposed nonrenewal, the employee shall notify the Board in writing not later than the 15th day after:

1. The date the employee receives hand delivery of the notice of proposed nonrenewal; or
2. The date the notice is delivered to the employee's address of record with the District, if the notice is mailed by prepaid certified mail or delivered by express delivery service.

The Board shall provide for a hearing to be held not later than the 15th day after receiving written notice from the employee requesting a hearing unless the parties agree in writing to a different date. The hearing shall be closed unless the employee requests an open hearing and shall be conducted in accordance with rules adopted by the Board.

Education Code 21.207(a)

Large District Option

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

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

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

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

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

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

Education Code 21.207(b-1)

Board Hearing

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

1. Be represented by a representative of the employee's choice;
2. Hear the evidence supporting the reason for nonrenewal;
3. Cross-examine adverse witnesses; and
4. Present evidence.

Education Code 21.207(c)

Board Decision

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

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

Hearing Examiner

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

No Hearing

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

Appeals

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

Reasons

Reasons for proposed nonrenewal of an employee's term contract shall be:

1. Deficiencies pointed out in observation reports, appraisals or evaluations, supplemental memoranda, or other communications.
2. Failure to fulfill duties or responsibilities.
3. Incompetency or inefficiency in the performance of duties.
4. Inability to maintain discipline in any situation in which the employee is responsible for the oversight and supervision of students.
5. Insubordination or failure to comply with official directives.
6. Failure to comply with Board policies or administrative regulations.
7. Excessive absences.
8. Conducting personal business during school hours when it results in neglect of duties.
9. Reduction in force because of financial exigency. [See DFFA(LOCAL)]
10. Reduction in force because of a program change. [See DFFB(LOCAL)]
11. Termination of a term contract employee resulting from being displaced by a continuing contract employee, when that employee has been identified for reduction in force.
12. Drunkenness or excessive use of alcoholic beverages; illegal use of drugs, hallucinogens, or possession, use, or being under the influence of alcohol or alcoholic beverages while on District property, while working in the scope of the employee's duties, or while attending any school- or District-sponsored activity.
13. The illegal possession, manufacture, or distribution of a controlled substance, a drug, a dangerous drug, hallucinogens, or other substances regulated by state statutes.
14. Failure to report any arrest, conviction, or deferred adjudication for any felony or any crime involving moral turpitude as required by policy. [See DH]
15. Conviction of a felony or of any crime involving moral turpitude; conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony; or deferred

adjudication for a felony or any crime involving moral turpitude. [See DH]

16. Failure to meet the District's standards of professional conduct.
17. Immorality, which is conduct the Board determines is not in conformity with the accepted moral standards of the community encompassed by the District. Immorality is not confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, or depravity.
18. Failure to comply with reasonable District requirements regarding advanced coursework or professional improvement and growth.
19. Disability, not otherwise protected by law, that prevents the employee from performing the essential functions of the job.
20. Any activity, school-connected or otherwise, that, because of publicity given it, or knowledge of it among students, faculty, or the community, impairs or diminishes the employee's effectiveness in the District.
21. Any breach by the employee of an employment contract or any reason specified in the employee's employment contract.
22. Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues.
23. A significant lack of student progress attributable to the educator.
24. Behavior that presents a danger of physical harm to a student or to other individuals.
25. Assault on a person on District property or at a school-related function, or on an employee, student, or student's parent regardless of time or place.
26. Use of profanity in the course of performing any duties of employment, whether on or off school premises, in the presence of students, staff, or members of the public, if reasonably characterized as unprofessional.
27. Falsification of records or other documents related to the District's activities.
28. Falsification or omission of required information on an employment application.

29. Intentional or deliberate misrepresentation of facts to a supervisor or other District official in the conduct of District business.
30. Failure to fulfill requirements for state licensure or certification, including passing certification or licensing examinations required by state or federal law or by the District, for the employee's assignment.
31. Failure to maintain licensing and certification requirements, including the completion of required continuing education hours, for the employee's assignment.
32. Failure to complete certification or permit renewal requirements, or failure to fulfill the requirements of a deficiency plan, under an Emergency Permit or a Temporary Classroom Assignment Permit.
33. Any attempt to encourage or coerce a child to withhold information from the child's parent or from other District personnel.
34. Any reason that makes the employment relationship void or voidable, such as a violation of federal, state, or local law.
35. Insufficient student academic growth as reflected by scores.
36. Placement in the excess pool.
37. Any reason constituting good cause for terminating the contract during its term.

Recommendations from Administration

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

Superintendent's Recommendation

The Superintendent shall identify employees whose contracts are recommended for renewal or proposed nonrenewal by the Board. The Board shall consider the reasons in support of the proposed nonrenewal and shall then act on all recommendations. [See DFBB(LEGAL)] Only the Board can rescind a proposed nonrenewal and issue a subsequent contract to the impacted employee. Any issuance of a contract without Board approval is void.

Notice of Proposed Nonrenewal

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

If the notice of proposed nonrenewal of a Chapter 21 term contract does not contain a statement of the reason or all the reasons for

the proposed action, and the employee requests a hearing, the District shall give the employee notice of all reasons for the proposed nonrenewal at a reasonable time before the hearing. The initial notice or any subsequent notice shall contain the hearing procedures.

Request for Hearing

Upon receiving notice of proposed nonrenewal for any reason, an employee on a performance contract shall not request a hearing or contest the proposed nonrenewal in any administrative or judicial forum. [See DCE(LOCAL)]

If the employee desires a hearing after receiving the notice of proposed nonrenewal, the employee shall file a written request with the commissioner of education, and provide the Board a copy of the request, not later than the 15th day after the date the employee received the notice of proposed nonrenewal.

Hearing Procedures

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

Board Decision

Following the hearing, the Board shall take appropriate action in accordance with Chapter 21 of the Education Code and policy DFD.

No Hearing

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

NOTICE OF PROPOSED CONTRACT NONRENEWAL
(FOR HEARINGS CONDUCTED BY A HEARING EXAMINER)

Date: _____

Name: _____

Address: _____

City/State/Zip: _____

Dear _____:

YOU ARE HEREBY NOTIFIED that the Superintendent of _____ ISD has recommended to the Board of Trustees at a lawfully called meeting of the Board of Trustees on (date) _____ that your employment contract as (job title) _____ in the District not be renewed for the succeeding school year, and the Board has voted to propose the nonrenewal.

This notice is given pursuant to the provisions of Section 21.206 of the Texas Education Code.

The recommendation not to renew your contract is being made for the following reasons:

[List all reasons in detail]

If you desire a hearing, you must file a written request with the Commissioner not later than the 15th day after the date you receive this notice and provide the Board with a copy of that request. The Commissioner shall assign a hearing examiner not later than the 10th business day after receiving your written request. Such hearing shall be closed unless you request an open hearing. If you fail to make a timely request for a hearing, the Board may proceed and make a determination upon the Superintendent's recommendation not later than the 30th day after the date the notice of proposed nonrenewal was sent to you.

If you have any questions concerning any of the reasons supporting the proposed action to nonrenew your contract, please advise the Superintendent in writing.

Attached to this notice is a copy of the District's policy on nonrenewal of term contracts and the policy on the procedures for a hearing by the hearing examiner.

This notice dated at (City/State/Zip): _____,

Date: _____ By: _____
President, Board of Trustees

_____ ISD

CONTINUING CONTRACTS
SUSPENSION/TERMINATION

DFCA
(LEGAL)

DISCHARGE

An employee employed under a continuing contract may be discharged at any time for good cause as determined by the board. "Good cause" is the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state.

SUSPENSION

For good cause as defined above, a district may suspend an employee without pay and for a period not to extend beyond the end of the current school year in lieu of discharge or pending discharge.

Education Code 21.156

REDUCTION IN FORCE

Continuing contract employees may be released from employment by a district at the end of a school year because of a necessary reduction of personnel.

A necessary reduction of personnel shall be made primarily based upon teacher appraisals administered under Education Code 21.352 in the specific teaching fields and other criteria as determined by the board.

Education Code 21.157

NOTICE

Before any employee under a continuing contract is discharged, suspended without pay in lieu of discharge, or released because of a necessary reduction in personnel, the employee shall be notified in writing by the board of the proposed action and the grounds for the action. *Education Code 21.158(a)*

An employee who is discharged or suspended without pay for actions related to the inability or failure of the employee to perform assigned duties is entitled, as a matter of right, to a copy of each evaluation report or any other written memorandum that concerns the fitness or conduct of the employee, by requesting in writing a copy of these documents. *Education Code 21.158(b)*

HEARING

An employee who desires to protest a proposed suspension or contract termination under Education Code 21.156 or 21.157 must notify the board in writing not later than the tenth day after the date the employee receives notice of the proposed action.

An employee who notifies a board within the time prescribed is entitled to:

1. A hearing before an independent hearing examiner under Education Code Chapter 21, Subchapter F [see DFD], if the employee is protesting proposed action to suspend or terminate the employee's continuing contract under Education Code 21.156; or

2. A hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F, as determined by the board, if the employee is protesting proposed action under Education Code 21.157 on the basis of a financial exigency declared under Section 44.011 [see CEA] that requires a reduction in personnel.

Education Code 21.159

HEARING NOT REQUESTED

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

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

Administrative Leave

A continuing contract employee may be placed on administrative leave by the Superintendent or designee during an investigation of any allegations or charges against the employee or at any time the Superintendent determines that the District's best interest will be served by the administrative leave.

Temporary Reassignment of an Employee on Administrative Leave

The Superintendent or designee may place an employee on administrative leave, which means the employee is temporarily reassigned from their regular duties, if the Superintendent or designee determines it is in the best interest of the District.

Reduction in Force

In accordance with state law, continuing contract employees may be released from employment and their contracts terminated by the District at the end of a school year because of necessary reduction of personnel.

Subsequent Contract

Only the Board can rescind a proposed nonrenewal and issue a subsequent contract to the impacted employee. Any issuance of a contract without Board approval is void.

Applicability

This hearing process applies only if an employee requests a hearing after receiving notice of a proposed decision to:

1. Terminate a continuing contract at any time, except as provided below;
2. Terminate a probationary or term contract before the end of the contract period, except as provided below; or
3. Suspend without pay.

Exception

This hearing process does not apply to a decision to:

1. Terminate a probationary contract at the end of the contract term;
2. Not renew a term contract, unless the board has adopted this process for nonrenewals; or
3. Terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the board has decided to use this hearing process.

Education Code 21.251

Request for Hearing

Not later than the 15th day after the date the employee receives notice of one of the proposed contract actions listed above, the employee must file a written request with the commissioner for a hearing before a hearing examiner. The employee must provide the district with a copy of the request and must provide the commissioner with a copy of the notice. The parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing. *Education Code 21.253*

Assignment of Hearing Examiner by Agreement

The parties may agree to select a hearing examiner from the list maintained by the commissioner or a person who is not certified to serve as a hearing examiner, provided that person is licensed to practice law in Texas. If the parties agree on a hearing examiner the parties shall, before the date the commissioner is permitted to assign a hearing examiner, notify the commissioner in writing of the agreement, including the name of the hearing examiner selected.

By Appointment

If the parties do not select a hearing examiner by agreement, the commissioner shall assign the hearing examiner not earlier than the sixth business day and not later than the 10th business day after the date on which the commissioner receives the request for a hearing. When a hearing examiner has been assigned, the commissioner shall notify the parties immediately.

Rejection — The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject an assigned hearing examiner for cause. A rejection must be in writing and filed with the commissioner not later than the third day after the date of notification of the hearing examiner's assignment. If the parties agree to reject the hearing examiner or if the commissioner determines that one party has good cause for the rejection, the commissioner shall assign another hearing examiner.

Finality of Decision — After the employee receives notice of the proposed contract action, the parties may agree in writing that the hearing examiner's decision be final and nonappealable on all or some issues.

Education Code 21.254

Powers of Hearing Examiner — The hearing examiner may issue subpoenas, administer oaths, rule on motions and the admissibility of evidence, maintain decorum, schedule and recess the proceedings, allow the parties to take depositions or use other means of discovery, and make any other orders as provided by commissioner rule.

Conduct of Hearing — The hearing and any depositions must be held within the geographical boundaries of the district or at the regional education service center that serves the district.

Education Code 21.255

Schedule Restriction — A hearing before a hearing examiner may not be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree. *Education Code 21.257(c)*

Private — A hearing before a hearing examiner shall be private unless the employee makes a written request for a public hearing.

Exception — If necessary to maintain decorum, the hearing examiner may close a hearing that an employee has requested be public.

Protection of Witnesses — To protect the privacy of a witness who is a child, the hearing examiner may close the hearing to receive the testimony or order that the testimony be presented by procedures in Article 38.071, Code of Criminal Procedure.

Employee Rights — At the hearing, the employee has the right to:

1. Be represented by a representative of the employee's choice;
2. Hear the evidence on which the charges are based;
3. Cross-examine each adverse witness; and
4. Present evidence.

The hearing is not subject to the Administrative Procedure Act.

The hearing shall be conducted in the same manner as a trial without a jury in state district court. A certified shorthand reporter shall record the hearing.

Evidence — The Texas Rules of Civil Evidence shall apply at the hearing. An evaluation or appraisal of the teacher is presumed to be admissible at the hearing. The hearing examiner's findings of fact and conclusions of law shall be presumed to be based only on admissible evidence.

Burden of Proof — The district has the burden of proof by a preponderance of the evidence at the hearing.

Education Code 21.256

Costs — The district shall bear the cost of the services of the hearing examiner and certified shorthand reporter and the production of any original hearing transcript. Each party shall bear its costs of discovery, if any, and its attorney's fees. *Education Code 21.255(e)*

Recommendation — Not later than the 60th day after the date on which the commissioner receives a request for a hearing before a hearing examiner, the hearing examiner shall complete the hearing and make a written recommendation. The recommendation must include findings of fact and conclusions of law. The recommendation may include a proposal for granting relief, including reinstatement, back pay, or employment benefits. The proposal for relief may not include attorney's fees or other costs associated with the hearing or appeals from the hearing. The hearing examiner shall send a copy of the recommendation to each party, the board president, and the commissioner.

Waiver of Deadline — The parties may agree in writing to extend by not more than 45 days the right to a recommendation by the date specified above.

Education Code 21.257

Consideration — The board or a designated subcommittee shall consider the hearing examiner's record and recommendation at the first board meeting for which notice can be posted in compliance with the open meetings laws. The meeting must be held not later than the 20th day after the date that the board president receives the hearing examiner's recommendation and record.

Oral Argument and Recording — At the meeting, the board or subcommittee shall allow each party to present an oral argument to the board or subcommittee. The board may, by written policy, limit the amount of time for oral argu-

ment, provided equal time is allotted each party. A certified shorthand reporter shall record any such oral argument.

Legal Advice

The board or subcommittee may obtain advice from an attorney who has not been involved in the proceedings.

Education Code 21.258, .260

Dismissal

The hearing examiner may dismiss a hearing before completing the hearing or making a written recommendation if:

1. The teacher requests the dismissal;
2. The school district withdraws the proposed decision that is the basis of the hearing; or
3. The teacher and school district request the dismissal after reaching a settlement regarding the proposed decision that is the basis of the hearing.

Education Code 21.257(f)

Decision

Not later than the 10th day after the date on which the meeting to consider the hearing examiner's recommendation is held, the board or subcommittee shall announce its decision, which must include findings of fact and conclusions of law, and may include a grant of relief.

The board or subcommittee may adopt, reject, or change the hearing examiner's conclusions of law or proposal for granting relief. A determination by the hearing examiner regarding good cause for the suspension of an employee without pay or the termination of a probationary, continuing, or term contract is a conclusion of law and may be adopted, rejected, or changed by the board or board subcommittee.

The board may reject or change a finding of fact made by the hearing examiner:

1. Only after reviewing the record of the proceedings; and
2. Only if the finding of fact is not supported by substantial evidence.

The board or subcommittee shall state in writing the reason for and legal basis for a change or rejection.

Education Code 21.257, .259

Recording

A certified shorthand reporter shall record the announcement of the decision. The district shall bear the cost of the reporter's services. *Education Code 21.260*

Record of Proceedings

The commissioner shall consider the appeal solely on the basis of the local record and may not consider any additional evidence or issue. *Education Code 21.301(c)*

The record of the proceedings before the independent hearing examiner shall include:

1. The transcripts of proceedings at the local level;
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the recommendation of the independent hearing examiner;
7. The transcript of the oral argument before the board or board subcommittee;
8. The decision of the board or board subcommittee; and
9. If applicable, the board or board subcommittee's written reasons for changing the recommendation of the independent hearing examiner.

19 TAC 157.1072(e)

The Board shall consider the hearing examiner's record and recommendation in accordance with the law. [See DFD(LEGAL)]

Time Limits for Oral Argument

The Board shall allow 10 minutes per party for oral argument. Administration shall be offered the opportunity to present argument first and may use a portion of the designated time for rebuttal after the other party has presented argument.

The Board reserves the right to grant additional time in equal amount to both parties, depending on the complexity of the issues and solely at the Board's discretion.

Requests to Reschedule Confirmed Texas Education Agency Appeal Dates

All requests to reschedule a confirmed Level Three Texas Education Agency (TEA) appeal date must be submitted to the District's Office of Board Services. The request will be granted only if approved by the District's Office of Legal Services.

Resignation without Consent (Unilateral Resignation)

An educator employed under a probationary contract for the following school year, or under a term or continuing contract, may relinquish the position and leave district employment at the end of the school year without penalty by filing a written resignation with a board or a board's designee not later than the 45th day before the first day of instruction of the following school year.

A written resignation mailed by prepaid certified or registered mail to a board president or a board's designee at the post office address of the district is considered filed at the time of mailing.

Education Code 21.105(a), .160(a), .210(a)

An unequivocal resignation filed not later than the 45th day before the first day of instruction of the following school year is effective upon filing with a district and the district cannot reject such a resignation. The resignation cannot be withdrawn by the teacher based on an argument that the district has not accepted the resignation. *Fantroy v. Dallas Indep. Sch. Dist., Tex. Comm'r of Educ. Decision. No. 034-R8-0206 (Mar. 5, 2009); Garcia v. Miles Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 055-RI-503 (Nov. 30, 2006).*

Resignation with Consent

The educator may resign, with the consent of the board or the board's designee, at any other time. *Education Code 21.105(b), .160(b), .210(b)*

Acceptance or approval of a resignation indicates consent to abandonment of contract. *Quitman Indep. Sch. Dist. v. Wilkerson, Tex. Comm'r of Educ. Decision No. 142-TTC-698 (Dec. 2, 1999); Houston Indep. Sch. Dist. v. Johnson, Tex. Comm'r of Educ. Decision No. 054-TTC-1196 (Sept. 28, 1998)*

Contract Abandonment

Written Complaint

On written complaint by a district, the State Board for Educator Certification (SBEC) may impose sanctions against an educator who is employed under a probationary contract, or under a continuing or term contract, for the following school year, and who:

1. Resigns;
2. Fails without good cause to comply with the resignation deadline or the provision regarding resignation by consent; and
3. Fails without good cause to perform the contract.

Education Code 21.105(c), .160(c), .210(c)

Sanctions Prohibited

SBEC may not impose a sanction against a teacher who relinquishes a position under a probationary, term, or continuing contract and leaves the employment of the district after the 45th day before the first day of instruction for the upcoming school year in violation of and without the consent of the board if the teacher's fail-

ure to comply with Education Code 21.105(a), 21.160(a), or 21.210(a) was due to:

1. A serious illness or health condition of the teacher or a close family member of the teacher;
2. The teacher's relocation because the teacher's spouse or a partner who resides with the teacher changes employers or location of employment;
3. A significant change in the needs of the teacher's family in a manner that requires the teacher to:
    a. Relocate; or
    b. Forgo employment during a period of required employment under the teacher's contract; or
4. The teacher's reasonable belief that the teacher had written permission from the school district's administration to resign.

Education Code 21.105(g), .160(g), .210(g)

Board Action

SBEC shall not pursue sanctions against an educator who is alleged to have abandoned his or her contract unless a board:

1. Submits a written complaint within 30 calendar days after the effective date of the educator's separation from employment from the district. Unless the district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract.
2. Renders a finding that good cause did not exist under Education Code 21.105(c)(2) (probationary contract), 21.160(c)(2) (continuing contract), or 21.210(c)(2) (term contract). This finding constitutes prima facie evidence of the educator's lack of good cause but is not a conclusive determination.
3. Submits the following required attachments to the written complaint:
    a. The educator's resignation letter, if any;
    b. The agreement with the educator regarding the effective date of separation from employment, if any;
    c. The educator's contract; and
    d. Board meeting minutes indicating a finding of "no good cause." If the board does not meet within 30 calendar

days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting.

19 TAC 249.14(j)

Notice to Teacher

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

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

SBEC Review

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

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

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

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

Mitigating Factors

SBEC shall consider the following factors in seeking, proposing, or making a decision regarding an educator who has abandoned a contract in violation of Education Code 21.105(c), 21.160(c), or 21.210(c). A reduction of one month in suspension time will be given for each factor established, except for the factors 7-10 below. The educator:

1. Gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
2. Assisted the school district in finding a replacement educator to fill the position;
3. Continued to work until the school district hired a replacement educator;
4. Assisted in training the replacement educator;

5. Showed good faith in communications and negotiations with the school district;
6. Provided lesson plans for classes following educator's resignation;
7. Changed careers within the field of education:
    a. To a position that required a different class of educator certification as defined in 19 Administrative Code 230.33(b) (relating to Classes of Certificates);
    b. To a position with a higher level of authority within the principal class of certificate; or
    c. To a position in an open-enrollment charter school or a district of innovation that is equivalent to the positions described above;
8. Had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;
9. Resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator; or
10. Any other relevant circumstances or facts.

19 TAC 249.17(d)(2)

Required Report to SBEC

A superintendent shall report the educator's resignation to SBEC if the conditions set forth at Education Code 22A.051 exist. [See DHB] *Education Code 22A.051*

Investigation

A superintendent of a district, including a district of innovation, shall complete an investigation of an educator that involves evidence that the educator may have abused or otherwise committed an unlawful act, was involved in a romantic relationship with, or solicited or engaged in sexual contact with a student or minor, despite the educator's resignation from employment before completion of the investigation. *Education Code 22A.051(b); 19 TAC 249.14(d)(3)(C)*

Report by Principal

A person who serves as a principal in a district, including a district of innovation, must notify the superintendent, and may be subject to sanctions for failure to do so as described by Education Code 22A.051(c) [see DPA]. *Education Code 22A.051(c)*

General Requirements

All resignations shall be submitted electronically via the District's online Voluntary Separation Form. Written submissions will be accepted at the discretion of the chief human resources officer. Each electronic submission shall be directed to one of the individuals authorized by this policy to receive resignations. The employee shall give reasonable notice and shall include in the submission a statement of the reason(s) for resigning. A prepaid certified or registered letter of resignation shall be considered submitted upon mailing.

At-Will Employees

The Superintendent or designee shall be authorized to accept the resignation of an at-will employee at any time.

Contract Employees

The Superintendent, chief human resources officer, or other person designated by Board action shall be authorized to receive a contract employee's resignation effective at the end of the school year or submitted after the last day of the school year and before the penalty-free resignation date. Such a resignation, properly submitted electronically through the Voluntary Separation Form, requires no further action by the District and is accepted upon receipt.

The Superintendent, chief human resources officer, or other person designated by Board action shall be authorized to receive and accept a contract employee's resignation submitted or effective at any other time. The authorized receiver shall either accept the resignation or submit the matter to the Board in order to pursue sanctions allowed by law.

Withdrawal of Resignation

Once submitted, the resignation of an employee may not be withdrawn by the employee without consent of the Superintendent or designee.

Reemployment After Resignation

An employee who resigns and subsequently seeks reemployment in the District shall:

1. Be employed on a probationary basis in accordance with appropriate policies; [See DCA(LEGAL)]
2. Be placed on the salary schedule in accordance with the appropriate section of the *Compensation Manual*;
3. Forfeit seniority and any unused accumulated local personal leave; and
4. Be subject to the personnel policies or any settlement agreements pertaining to the reemployment of former employees.

An employee who resigns or retires to avoid District-initiated termination or nonrenewal shall not be eligible for reemployment

with the District. An employee who resigns after the District has initiated an investigation of alleged misconduct may be eligible for reemployment only after review and approval by the Office of Human Resources.

TERMINATION OF EMPLOYMENT
RESIGNATION

DFE
(REGULATION)

REQUEST RELEASE FROM CONTRACT

1. Professional educators are expected to abide by the terms and conditions of their employment contracts. However, a contract employee may request the District Board of Education or the Board's designee to consider a release from his or her contract. The procedure regarding such a request is as follows:

   - The employee completes a Request for Contract Release form (available from Human Resources) and mails it prepaid, registered, or certified mail to the Superintendent or designee at least 45 days in advance of the proposed release date. See Reference (c);
   - The request date for release from contract for nonteachers will be reviewed and certified by the appropriate human resources administrator and the executive general manager, Human Resources, and presented to the Board of Education for consideration at the next regularly scheduled Board meeting;
   - After the Board of Education has considered the request for release, the employee making the request will be advised by the appropriate Human Resources administrator of the Board's decision; and
   - If the request for release is denied and the professional educator fails to perform the contract, the provisions at FAILURE TO PERFORM CONTRACT OR RESIGN ACCORDING TO PROCEDURE will apply.

FAILURE TO PERFORM CONTRACT OR RESIGN ACCORDING TO PROCEDURE

2. In the event that a professional educator fails to perform his or her contract or fails to resign according to Reference (a), such failure shall be brought to the attention of the Superintendent. The Superintendent or his or her designee will report the failure to the Commissioner of Education by letter and request that the professional educator's teaching certificate be suspended according to law. See Reference (b).

STATE BOARD FOR EDUCATOR CERTIFICATION IMPOSED SANCTIONS

3. On written complaint of the District, the State Board for Educator Certification may impose sanctions against an employee who is employed under a contract for the following school year and resigns, fails without good cause to comply with the resignation deadlines, and fails without good cause to perform the contract.

CONSULTATION

4. This regulation has been through consultation (Administrative: April 16, 2002; Instructional: April 4, 2002; Noninstructional: April 9, 2002).

MAINTENANCE RESPONSIBILITY

5. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DFE(LOCAL)

(b) Texas Education Code §21.210 Resignation Under Term Contract

TERMINATION OF EMPLOYMENT
REDUCTION IN FORCE

DFF
(LEGAL)

BOARD AUTHORITY

A board is charged with the responsibility of governance of a district; governance includes the making of responsible choices in managing the finances and personnel of the district. *Stidham v. Anahuac Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 205-R2-687 (1990) (upholding reduction in force due to financial exigency)*

A district is always free to change its organizational structure as it seeks to increase its efficiency. *Wasserman v. Nederland Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 171-R1-784 (1988)*

CONSIDERATION FOR OPEN POSITIONS

The commissioner of education has held that, when a position is eliminated due to a necessary reduction in force, a district must transfer the employee to a different position if the teacher meets a district's objective criteria for that position. Objective criteria may include credentials, education, experience, applying for the position, and interviewing for the position. A district need not offer a position to a teacher who refuses to apply and interview for an open position. *Amerson v. Houston Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 022-R2-1202 (2003)*

PROBATIONARY CONTRACT

A probationary contract employee may be discharged at any time for good cause as determined by the board. If the employee is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared under Education Code 44.011 [see CEA], the employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the board. *Education Code 21.104(a), .1041(2)*

A board may terminate a probationary contract at the end of the contract period if in the board's judgment such termination will serve the best interests of the district. *Education Code 21.103(a)*

TERM CONTRACT

A board may terminate a term contract and discharge a term contract employee at any time due to a financial exigency that requires a reduction in personnel. *Education Code 21.211(a)*

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the board in writing not later than the tenth day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner)

[see DFD], as determined by the board. *Education Code 21.159(a), (b)(2)*

CONTINUING CONTRACT

A teacher employed under a continuing contract may be released and the teacher's employment terminated at the end of a school year because of a necessary reduction of personnel by the district. A necessary reduction of personnel shall be made primarily based upon teacher appraisals administered under Education Code 21.352 in the specific teaching fields and other criteria as determined by the board. *Education Code 21.157*

Before a teacher employed under a continuing contract may be released because of a necessary reduction of personnel, the board must notify the teacher in writing of the proposed action and the grounds for the action. *Education Code 21.158(a)*

If the teacher desires to protest the proposed necessary reduction of personnel, the teacher must notify the board in writing not later than the tenth day after the date the teacher receives notice. *Education Code 21.159(a)*

A teacher who timely notifies the board is entitled to a hearing in a manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or in the manner provided under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the board. *Education Code 21.159(b)*

If the teacher does not timely request a hearing the board shall take the appropriate action and notify the teacher in writing not later than the 30th day after the date the board sent the notice of the proposed necessary reduction in personnel. *Education Code 21.159(c)*

FINANCIAL EXIGENCY

A board may adopt a resolution declaring a financial exigency for the district. *Education Code 44.011* [See CEA]

HEARING EXAMINER

The independent hearing examiner process does not apply to a decision to terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the board has decided to use this hearing process. *Education Code 21.251*

WARN ACT

Local governments are not covered by the federal Worker Adjustment and Retraining Notification Act (WARN Act) (plant closings and mass layoffs). *20 C.F.R. 639.3(a)(ii)*

Plan to Reduce Personnel Costs

If the Superintendent determines that there is a need to reduce personnel costs, the Superintendent shall develop, in consultation with the Board as necessary, a plan for reducing costs that may include one or more of the following:

- Salary reductions [see DEA];
- Furloughs [see DEA];
- Reductions in force of contract personnel due to financial exigency, if the District meets the standard for declaring a financial exigency as defined by the commissioner [see CEA and provisions at Reduction in Force Due to Financial Exigency, below];
- Reductions in force of contract personnel due to program change [see DFFB]; or
- Other means of reducing personnel costs.

A plan to reduce personnel costs may include the reduction of personnel employed pursuant to employment arrangements not covered at Applicability, below.

- See DCD for the termination at any time of at-will employment.
- See DFAB for the termination of a probationary contract at the end of the contract period.
- See DFCA for the termination of a continuing contract, if applicable.
- See DCE for the termination at the end of the contract period of a contract not governed by Chapter 21 of the Education Code.

Reduction in Force Due to Financial Exigency

Applicability

The following provisions shall apply when a reduction in force due to financial exigency requires:

1. The nonrenewal or termination of a term contract;
2. The termination of a probationary contract during the contract period; or
3. The termination of a contract not governed by Chapter 21 of the Education Code during the contract period.

Definitions

Definitions used in this policy are as follows:

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

2. “Discharge” shall mean termination of a contract during the contract period.

General Grounds

A reduction in force may take place when the Superintendent recommends and the Board adopts a resolution declaring a financial exigency. [See CEA] A determination of financial exigency constitutes sufficient reason for nonrenewal or sufficient cause for discharge.

Employment Areas

When a reduction in force under this policy is to be implemented, the Superintendent shall recommend the employment areas to be affected.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.
3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education.
4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.
5. Counseling programs.
6. Library programs.
7. Nursing and other health services programs.
8. An educational support program that does not provide direct instruction to students.
9. District-wide programs.
10. An individual campus.
11. Any administrative position(s), unit, or department.
12. Programs funded by state or federal grants or other dedicated funding.
13. Other contractual positions.

The Superintendent’s recommendation may address whether any employment areas should be:

1. Combined or adjusted (e.g., “elementary programs” and “compensatory education programs” can be combined to

identify an employment area of “elementary compensatory education programs”); and/or

2. Applied on a District-wide or campus-wide basis (e.g., “the counseling program at [named elementary campus]”).

The Board shall determine the employment areas to be affected.

Criteria for Decision

The Superintendent or designee shall apply the following criteria to the employees within an affected employment area based on the employee’s assignment at the time the Board approves the employment areas affected by the reduction in force. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth. However, if there is only one individual in the identified employment area or if all individuals in the employment areas will be affected by the reduction in force, then there is no need to apply the criteria to the individual(s) in the affected employment area(s).

1. Performance: Effectiveness, as reflected by the most recent formal appraisal and, if available, consecutive formal appraisals from more than one year [see DNA] and any other written evaluative information including, but not limited to, disciplinary information and directives previously issued. If the Superintendent or designee at their discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, they may proceed to apply the remaining criteria in the order listed below.

2. Extra Duties/Supplemental: Currently performing an extra-duty or supplemental assignment, for example, department or grade-level chair, band director, athletic coach, activity sponsor, and the like that the designee believes would have a detrimental impact on the school. In making the determination of whether this criterion applies, the principal may consider whether a replacement from among campus members, who are not subject to the reduction in force, can be found who can perform these duties at the same level.

3. Seniority: Length of continuous service in the District, as measured from the employee’s most recent date of hire. An authorized leave shall not be considered an interruption of continuous service.

4. Professional Background: Professional education and work experience related to the current or projected assignment.

Superintendent Recommendation

The Superintendent shall recommend to the Board the nonrenewal or discharge of the identified employees within the affected employment areas.

Board Vote

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

If the Board votes to propose nonrenewal or discharge of one or more employees, the hearing shall be conducted by an independent hearing examiner in accordance with the process described at DFD(LEGAL) or DFBB(LOCAL).

Notice

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

1. The proposed action, as applicable;
2. A statement of the reason for the proposed action; and
3. Notice, if applicable, that the employee is entitled to a hearing of the type determined by the Board.

Consideration for Available Positions

An employee who has received notice of proposed nonrenewal or discharge may apply for available positions for which they wish to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures. Assignments to new jobs shall be based on matching of skill sets.

Employees proposed for nonrenewal or discharge under this policy shall be considered for positions for which they apply and are qualified up until:

1. Final action by the Board to end the employee's contract, if the employee does not request a hearing; or
2. The evidentiary hearing by the independent hearing examiner, if the employee requests a hearing.

Hearing Request

Nonrenewal: Term Contract

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

Discharge: Chapter 21 Contract

An employee receiving notice of proposed discharge from a contract governed by Chapter 21 of the Education Code may request a hearing. The hearing shall be conducted in accordance with DFD

	or the nonrenewal hearing process in DFBB, as determined by the Board and specified in the notice of proposed discharge.
Discharge: Non-Chapter 21 Contract	An employee receiving notice of proposed discharge during the period of an employment contract not governed by Chapter 21 of the Education Code may request a hearing before the Board or its designee in accordance with DCE(LOCAL).
Final Action	
Hearing Requested	If the employee requests a hearing, the Board shall take final action after the hearing in accordance with DCE, DFBB, or DFD, as applicable, and shall notify the employee in writing.
No Hearing Requested	If the employee does not request a hearing, the Board shall take final action in accordance with DCE, DFBB, or DFD, as applicable, and shall notify the employee in writing.

REDUCTION IN FORCE
PROGRAM CHANGE

DFFB
(LOCAL)

Applicability

This policy shall apply when a reduction in force due to a program change requires the nonrenewal of a term contract. A program change may be due to, for example, a redirection of resources; efforts to improve efficiency; a change in enrollment; a lack of student response to particular course offerings; legislative revisions to programs; or a reorganization or consolidation of two or more individual schools, departments, or school districts.

Definitions

Definitions used in this policy are as follows:

1. "Program change" shall mean any elimination, curtailment, or reorganization of a program, department, school operation, or curriculum offering, including, for example, a change in curriculum objectives; a modification of the master schedule; the restructuring of an instructional delivery method; or a modification or reorganization of staffing patterns in a department, on a particular campus, or District-wide.
2. "Reorganization" shall mean a change in positions due to:
    a. A change, elimination, or addition of a function within a department or school; or
    b. A change in the role, responsibility, qualifications, or skill level of a significant number of employees within a department, school, or within a category of employees.
3. "Nonrenewal" shall mean the termination of a term contract at the end of the contract period.

General Grounds

A reduction in force may take place when the Superintendent determines that a program change is required. A determination of a program change constitutes sufficient reason for nonrenewal.

Employment Areas

When a reduction in force is to be implemented, the Superintendent shall recommend to the Board for approval the employment areas to be affected. The Superintendent, with input from campuses and/or departments, may assist the Board by making recommendations regarding the employment areas.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.

3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education. Each special program is a separate employment area.
4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.
5. Counseling programs.
6. Library programs.
7. Nursing and other health services programs.
8. An educational support program that does not provide direct instruction to students.
9. District-wide programs.
10. An individual campus.
11. Any administrative position(s), unit, or department.
12. Programs funded by state or federal grants or other dedicated funding.
13. Other contractual positions.
14. A job code that corresponds to the position/duties an affected employee currently performs.

The Superintendent's recommendation may address whether any employment areas should be:

1. Combined or adjusted (e.g., "elementary programs" and "compensatory education programs" can be combined to identify an employment area of "elementary compensatory education programs"); and/or
2. Applied on a District-wide or campus-wide basis (e.g., "the counseling program at [named elementary campus]").

The Board shall determine the employment areas to be affected.

Criteria for Decision

The Superintendent or designee shall apply the following criteria to an employee within an affected employment area based on the employee's assignment at the time the Board approves the employment areas affected by the reduction in force. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by ap-

plying the first criterion, it is not necessary to apply the second criterion, and so forth. However, if there is only one individual in the identified employment area or if all individuals in the employment area will be affected by the reduction in force, then there is no need to apply the criteria to the individual(s) in the affected employment area(s).

1. Performance: Effectiveness, as reflected by:

    a. The most recent formal appraisal and, if available, consecutive formal appraisals from more than one year [see DNA]; and

    b. Any other written evaluative information including but not limited to disciplinary information and directives previously issued.

2. If the Superintendent or designee at their discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, they may proceed to apply the remaining criteria in the order listed below.

3. Extra Duties/Supplemental: Currently performing an extra-duty or supplemental assignment, for example, department or grade-level chair, band director, athletic coach, activity sponsor, and the like that the designee believes would have a detrimental impact on the school. In making the determination of whether this criterion applies, the principal may consider whether a replacement from among campus members, who are not subject to the reduction in force, can be found, who can perform these duties at the same level.

4. Seniority: Length of continuous service in the District, as measured from the employee's most recent date of hire. An authorized leave shall not be considered an interruption of continuous service.

5. Professional Background: Professional education and work experience related to the current or projected assignment.

Superintendent Recommendation

The Superintendent shall recommend to the Board the nonrenewal of the identified employees within the affected employment areas.

Board Vote

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

Notice

The Superintendent or designee shall provide each employee written notice of the proposed nonrenewal. The notice shall include a

statement of the reason for the proposed action and notice that the employee is entitled to a hearing.

Consideration for Available Positions

An employee who has received notice of proposed nonrenewal may apply for available positions for which they wish to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures to be considered for a particular vacancy. Assignments to new jobs shall be based on matching of skill sets.

Employees proposed for nonrenewal under this policy shall be considered for positions for which they apply and are qualified up until:

1. Final action by the Board to end the employee's contract, if the employee does not request a hearing; or
2. The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.

Hearing Request

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

Final Action

Hearing Requested

If the employee requests a hearing, the Board shall take final action after the hearing in accordance with DFBB and shall notify the employee in writing of its decision.

No Hearing Requested

If the employee does not request a hearing, the Board shall take final action in accordance with DFBB and shall notify the employee in writing of its decision.

APPLICABILITY

This policy shall apply when a necessary reduction of personnel requires the termination of an employee on a continuing contract.

GENERAL GROUNDS

A reduction of personnel may take place when the Superintendent recommends and the Board adopts a resolution declaring a financial exigency [see CEA] or determines another need to reduce personnel on continuing contracts.

TEACHING FIELDS

When a reduction of personnel is to be implemented, the Superintendent shall recommend the teaching fields to be affected.

Teaching fields may include, for example:

1. Elementary;
2. Special education;
3. Fine arts;
4. World languages;
5. Secondary subject areas;
6. Career and technical education;
7. District administration;
8. Campus administration;
9. Instructional support;
10. Administrative support;
11. Ancillary;
12. Nurses and other health services;
13. Librarian;
14. School counselor;
15. Physical education;
16. In-school supervisors/SRC; and
17. Reading programs.

The Superintendent's recommendation may address whether any teaching fields should be:

1. Combined or adjusted (e.g., "elementary" and "fine arts" can be combined to identify a teaching field of "elementary fine arts"); and/or

2. Applied on a District-wide or campus-wide basis (e.g., "secondary science at [named high school campus]").

CRITERIA FOR DECISION

The Board shall determine the teaching fields to be affected.

The Superintendent or designee shall apply the following criteria to the employees within an affected teaching field when the reduction of personnel will not result in the termination of all staff. "Teaching fields" shall have the same meaning as "employment area" under Board policies DFFA(LOCAL) and DFFB(LOCAL). The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction of personnel. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth.

1. Appraisal in the teaching field: Effectiveness, as reflected by the most recent formal appraisal and, if available, consecutive formal appraisals from more than one year [see DNA] and any other written evaluative information including but not limited to disciplinary information and directives previously issued.

   If the Superintendent or designee, at his or her discretion, decides that the documented performance differences between two or more employees are too insubstantial to rely upon, he or she may proceed to apply the remaining criteria in the order listed below.

2. Extra Duties/Supplemental: Currently performing an extra-duty or supplemental assignment, for example, department or grade-level chair, band director, athletic coach, or activity sponsor, and the like that the designee believes would have a detrimental impact on the school. In making the determination of whether this criterion applies, the principal may consider whether a replacement can be found from among campus members who are not subject to the reduction in force and who can perform these duties at the same level.

3. Seniority: Length of continuous service in the District, as measured from the employee's most recent date of hire. An authorized leave shall not be considered an interruption of continuous service.

4. Professional Background: Professional education and work experience related to the current or projected assignment.

SUPERINTENDENT RECOMMENDATION

The Superintendent shall recommend to the Board the termination of the identified employees within the affected teaching fields.

BOARD VOTE

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

NOTICE

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

1. The proposed action;
2. A statement of the reason for the proposed action; and
3. Notice that the employee is entitled to a hearing of the type determined by the Board.

CONSIDERATION FOR AVAILABLE POSITIONS

An employee who has received notice of a proposed termination may apply for available positions for which he or she wishes to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures to be considered for a particular vacancy. Assignments to new jobs shall be based on matching of skill sets.

An employee proposed for termination under this policy shall be considered for positions for which he or she applies and is qualified up until:

1. Final action by the Board to end the employee's contract, if the employee does not request a hearing; or
2. The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.

HEARING REQUEST

An employee receiving notice of proposed termination due to financial exigency may request a hearing. The hearing shall be conducted in accordance with DFD or the nonrenewal hearing process in DFBB, if applicable, as determined by the Board and specified in the notice of proposed termination.

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

FINAL ACTION

HEARING REQUESTED

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

NO HEARING REQUESTED	If the employee does not request a hearing, the Board shall take final action in accordance with DFBB or DFD, as applicable, and shall notify the employee in writing of its decision.
EFFECTIVE DATE	This policy shall be effective as of the adoption date, December 12, 2014.

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 timelines 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 district may not suspend or terminate the employment of, discriminate against, or take other adverse employment action against a professional employee who in good faith:

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.

"Adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect under Family Code 261.101.

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

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

Family Code 261.110(a)-(c), (l)

Protection from Disciplinary Proceedings

For purposes of the following provisions, "disciplinary proceeding" means discharge or suspension of a professional employee, or termination or nonrenewal of a professional employee's term contract. [See DGC regarding immunity] *Education Code 22.0512(b)*

Reporting Child Abuse or Maltreatment

A district employee may not be subject to any disciplinary proceeding resulting from an action taken in compliance with Education Code 38.0041 [prevention of child abuse and other maltreatment, see FFG]. *Education Code 38.0041(g)*

Use of Physical Force

A professional employee may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Penal Code 9.62. This provision does not prohibit a district from enforcing a policy relating to corporal punishment or bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment. *Education Code 22.0512(a); Tex. Atty. Gen. Op. GA-0202 (2004)*

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

1. If the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
2. When and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

Penal Code 9.62

Failure to Follow Scope, Sequence, and Instructional Materials

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

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

Education Code 28.0027(b), (c)

A classroom teacher employed by a district may not be subject to disciplinary proceedings for an allegation that the teacher violated Education Code 28.0022, the Establishment Clause of the First Amendment of the United States Constitution, or a related state or federal law if:

1. The teacher used only instructional material included on the list of approved instructional material maintained by the State Board of Education under Education Code 31.022 and adopted by the district; and

2. The allegation does not dispute that the teacher delivered instruction from the instructional material with fidelity.

This immunity is in addition to, and may not be construed to interfere with, any other immunity provided by law.

Education Code 22.05125

Instructional Materials and Technological Equipment

A board may not require an employee who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. An employee may not waive this provision by contract or any other means.

Exception

A district may enter into a written agreement with an employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the employee to use the electronic instructional material or technological equipment for personal business.

The written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to enter into such an agreement as a condition of employment.

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

Controversial Topics

For any course or subject, including an innovative course, for a grade level from kindergarten through grade 12, a teacher may not be compelled to discuss a widely debated and currently controver-

sial issue of public policy or social affairs. *Education Code 28.0022(a)*

Note: For instructional requirements and prohibitions, including requirements for student discussion, see EMB.

Jury Duty

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

A district may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against a school district employee because of the employee's compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, a school district shall pay the employee the employee's normal daily compensation [see DEC]. *Education Code 22.006(a), (b)*

Voting

A person commits an offense if, with respect to another person over whom the person has authority in the scope of employment, the person knowingly refuses to permit the other person to be absent from work on election day or while early voting is in process for the purpose of attending the polls to vote, or subjects or threatens to subject the other person to a penalty for attending the polls on election day or while early voting is in progress to vote. Penalty means a loss of wages or another benefit of employment.

It is an exception to the application of this provision that the person's conduct occurs in connection with an election in which the polls are open on election day or while early voting is in progress for voting for two consecutive hours outside of the voter's working hours.

Election Code 276.004

Breaks for Nursing Mothers

A district shall provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth each time the employee has need to express the milk.

A 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 shall not be required to compensate an employee receiving reasonable break time for any time spent during the workday for such purpose unless otherwise required by federal or state law or municipal ordinance.

Break time provided shall be considered hours worked if the employee is not completely relieved from duty during the entirety of the break.

A district that employs less 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.

This requirement does not preempt a state law or municipal ordinance that provides greater protections to employees.

29 U.S.C. 218d

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)

Designated Time for Prayer

The board of trustees may adopt a policy requiring every campus of the district or school to provide students and employees with an opportunity to participate in a period of prayer and reading of the Bible or other religious text on each school day in accordance with this section. [See FNA]

Regardless of whether the board adopts a policy under Education Code 25.0823(a), this section does not prohibit a student or employee of the district or school from participating in prayer or reading the Bible or other religious text during a period of the school day that is not designated as a period of prayer and reading of the Bible or other religious text.

Education Code 25.0823(a),(g)

Right to Engage in Religious Speech or Prayer

The right of an employee of a school district or open-enrollment charter school to engage in religious speech or prayer while on duty may not be infringed on by the district or school or another state governmental entity, unless the infringement is necessary to further a compelling state interest; and narrowly tailored using the least restrictive means to achieve that compelling state interest.
Education Code 22.012

United States Constitution

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

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

Texas Constitution

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

Federal Laws

Section 504

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

Americans with Disabilities Act

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

Title IX

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

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 Am. Fed'n of Teachers v. Corpus Christi Indep. Sch. Dist., 572 S.W.2d 663 (Tex. 1978)

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

Representative

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

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

Employment Policy

A district's employment policy must provide each employee with the right to present grievances to the board.

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

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

Education Code 11.1513

District Grievance Policy

The board shall adopt a grievance policy to address grievances received by the district. *Education Code 26A.001(a)*

Levels of Review

The policy must provide for the following levels of review, except as provided below:

1. Review by the principal of the district campus at which the grievance is filed or the principal's designee or, for a griev-

ance that arises from subject matter unrelated to a campus, an administrator at the school district's central office;

2. If established by the policy, an appeal to an administrator at the school district's central office;

3. An appeal to the superintendent of the school district or the superintendent's designee; and

4. An appeal to the board of trustees of the school district.

A review or appeal on a grievance must be conducted by a person with the authority to address the grievance unless a preliminary hearing is necessary to develop a record or a recommendation for the board of trustees of the school district.

Education Code 26A.001(b), (c)

General Requirements

The policy must:

1. Prohibit the board or a district employee from retaliating against a student or parent of a student who files a grievance in accordance with the policy;

2. Require a person involved in reviewing a grievance under the policy to recuse himself or herself from reviewing the grievance if the person is the subject of the grievance;

3. Provide for a higher level of review if the person who would otherwise review the grievance is required to recuse himself or herself;

4. Provide for the creation and retention of a record of each hearing on the grievance, including documents submitted by the person who filed the grievance or determined relevant by school district personnel and a written record of the decision, including an explanation of the basis for the decision and an indication of each document that supports the decision;

5. Allow the person who filed the grievance to supplement the record with additional documents or add additional claims;

6. Allow for a member of the board to file a grievance with the district, but prohibit the member from voting on matters related to that grievance;

7. Allow for a remand to a lower level of review to develop a record at any time, including at the board level of review;

8. Require the district to direct a grievance that is filed with the incorrect administrator to the appropriate administrator and

consider the grievance filed on the date on which the grievance was initially filed;

9. Require the district to issue a decision on the merits of the concern raised in the grievance, notwithstanding procedural errors or the type of relief requested;

10. Unless otherwise required by law, allow for a hearing or meeting at which the grievance will be discussed to be open or closed at the request of the person who filed the grievance; and

11. For a grievance before the board, require that the person who filed the grievance be provided at least five business days before the date on which the meeting to discuss the grievance will be held a description of any information the board of trustees intends to rely on that is not contained in the record; and

12. For a grievance before the board, require the meeting at which the grievance is discussed be recorded by video or audio recording or by transcript created by a certified court reporter.

Education Code 26A.001(e)

Deadlines

Appeal

The policy must provide at least 20 days to file an appeal after the date on which a decision on the grievance was made.

Hearings

For a hearing that is not before the board of trustees of the school district, the policy must require:

1. The district to hold a hearing not later than the 10th day after the date on which the grievance or appeal was filed; and

2. A written decision to be made not later than the 20th day after the date on which the hearing was held that includes any relief or redress to be provided and information regarding filing an appeal, including the timeline to appeal under this provision and Education Code 7.057, if applicable.

For a hearing before the board, the policy must require the board to:

1. Hold a meeting to discuss the grievance not later than the 60th day after the date on which the previous decision on the grievance was made; and

2. Make a decision on the grievance not later than the 30th day after the date on which the meeting is held.

Education Code 26A.002

Employee Grievance Policy

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

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

Telephone Representation

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

Education Code 11.171(a), (c)

Audio Recording

A district's grievance policy must permit an employee who reports a grievance to make an audio recording of any meeting or proceeding at which the substance of a grievance that complies with the policy is investigated or discussed. The implementation of an employee's authorization to make an audio recording may not result in a delay of any timeline provided by the grievance policy. A district is not required to provide equipment for the employee to make the recording. *Education Code 11.171(b)*

Board Committee

The board may delegate the authority to hear and decide a grievance to a committee of at least three members composed only of members of the board. For purposes of an appeal to the commissioner under Education Code 7.057, a decision by the committee is a decision of the board of trustees. The policy requirements above apply to the committee in the same manner as those requirements apply to the board. *Education Code 26A.001(e)*

Report on Grievance

Each school district shall annually submit a report on grievances filed in the district during the preceding year. *Education Code 26A.001(g)*

Filing Procedures and Forms

The board shall develop, make publicly available in a prominent location on the district's website, and include in the district's student handbook the procedures for resolving grievances; standardized forms for filing a grievance, a notice of appeal, or a request for a hearing under this chapter; and the method by which a grievance may be filed electronically.

Electronic Filing

A district shall ensure that a grievance may be submitted electronically at the location on the district's website at which the information described above is available.

TEA Notification

A district shall submit and make accessible to the Texas Education Agency the location on the district's website at which the information described above is available.

Education Code 26A.003

Commissioner Enforcement

If a grievance is appealed to the commissioner under Education Code 7.057, the commissioner of education may:

On Appeal

1. Investigate an alleged violation of state or federal law regarding the confidentiality of student information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), relating to the grievance and collaborate with relevant federal agencies in such an investigation; and

2. Take any action necessary to compel the district, the district's board, or a district employee to comply with the state or federal law.

Education Code 26A.001(f)

Determination of Retaliation

If the commissioner determines that a school district educator has retaliated against a student or parent of or person standing in parental relation to a student in violation of the policy requirement, above, the commissioner of education may report the educator to the State Board for Educator Certification for investigation. *Education Code 26A.001(i)*

Superintendent Testimony

If the commissioner of education finds against a school district under Education Code 7.057 in at least five grievances to which that provision applies involving the district during a school year, the superintendent of the school district must appear before the State Board of Education to testify regarding the commissioner's findings and the frequency of grievances against the district. *Education Code 26A.004*

Finality of Grades

An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with a district's grading policy applicable to the grade, as determined by the board.

A board's determination is not subject to appeal.

Education Code 28.0214

Open Meetings Act

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

Closed Meeting

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

Record of Proceedings

An appeal of a board's decision to the commissioner shall be decided based on a review of the record developed at the district level. "Record" includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

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

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

19 TAC 157.1073(d)

Whistleblower Complaints

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

Direct Communication with Board Members

Employees shall not be prohibited from communicating with a member of the Board regarding District operations except when communication between an employee and a Board member would be inappropriate because of a pending hearing or appeal related to the employee.

Dispute Resolution Process

The dispute resolution process provides employees an orderly process for the prompt and equitable resolution of disputes when a concern has not been resolved. The Board intends that, whenever feasible, disputes be resolved at the lowest possible administrative level. This policy shall not be construed to create new or additional rights beyond those granted by Board policy or law.

Definitions

For purposes of this policy, “days” shall mean District business days unless otherwise noted in this policy. In calculating timelines under this policy, the day a document is filed is "day zero." The following business day is "day one."

For the purposes of this policy, “Superintendent” shall mean the Superintendent or designee.

For the purposes of this policy, “employee” shall mean a current or former employee of the District.

The terms “dispute,” “complaint,” and “grievance” shall have the same meaning. A dispute under this policy may include, but shall not be limited to, any of the following:

1. Grievances concerning an employee’s wages, hours, or conditions of work, including employment status.
2. Specific allegations of discrimination or harassment in employment on the basis of marital status, sexual orientation, gender identity, and/or gender expression.
3. Specific allegations of unlawful discrimination, such as discrimination based on veteran status or retaliation on the basis of the employee’s exercise of constitutional rights, including but not limited to, political affiliation.
4. Whistleblower complaints.

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 the DIA series.

2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violation of Title VII, shall be submitted in accordance with the DIA series.

3. Complaints concerning retaliation relating to discrimination and harassment shall be submitted in accordance with the DIA series.

4. Complaints concerning instructional resources shall be submitted in accordance with the EF series.

5. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with the CKE series.

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 principal shall inform employees of this policy through appropriate publications.

Freedom from Retaliation

Neither the Board nor any District employee shall unlawfully retaliate against an employee for bringing a concern or complaint. [See DG(LEGAL)]

Whistleblower Complaints

Employees who allege adverse employment action in retaliation for reporting a violation of law to an appropriate authority shall initiate a dispute resolution process under this policy within the time specified by law. [See DG(LEGAL)]

The complaint shall first be filed in accordance with the alternative entry into the dispute resolution process, provided below. Timelines for the employee and the District set out in this policy may be shortened to enable 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 supervisor's violation of law may be made to the next line supervisor who is in vertical alignment with the supervisor against whom the complaint is brought. A complaint alleging a violation of law by the Superintendent may be made to the chief human resources officer under the alternative entry process specified in this policy.

General Requirements

The dispute resolution form, which is available in English[1] and Spanish[2] from the Employee Relations Department, must specify the individual harm alleged. An employee is prohibited from bringing separate or serial grievances regarding the same event or action. All time limits shall be strictly complied with unless modified by mutual consent. Costs of any dispute shall be paid by the party incurring them.

Consolidation

When the Superintendent determines that two or more individual concerns are sufficiently similar in nature and remedy to permit their resolution through one proceeding, the Superintendent may consolidate the disputes.

Representation at Dispute Resolution Conferences

An employee shall be entitled to representation at any and all meetings that directly relate to the issues that are being addressed in the dispute resolution process. An employee may represent themself or be represented by an individual of their choosing. The representative may participate in person or by telephone conference call, or virtually if available. An employee may not designate a representative who claims the right to strike.

Time Frames

The primary purpose of the dispute resolution process is the resolution of concerns in an expeditious manner. The time frames set forth at each level of the process are maximums and, whenever possible, the decision-maker should render a decision or resolution within a shorter period of time.

All time frames shall be counted in business days, the first day commencing on the next business day after the event triggering the time frame. Time frames shall not include days that are Districtwide designated holidays.

Although the employee may not file a separate grievance for failure of the administration to comply with established time frames under this policy, upon notification by the grievant or the grievant's representative, if it is found that an administrator has failed to meet a designated timeline, the Superintendent or designee shall issue written administrative directives to a responsible party. The grievant may seek the relief for the lack of compliance with the time frames as set forth below for each step of the process.

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 individual, at any point during the complaint process. The individual may appeal the dismissal by seeking review in writing within 10 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 may be attached to the complaint form. If the employee does not have copies of these documents, they may be presented at the Level One or Level Two conferences.

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. However, no complaint form that has a completed Statement of Concern section and a Remedy Requested section of the form shall be dismissed for failure to submit relevant documentation.

Scheduling Conferences

All conferences shall take place during normal District business hours. All participants, including witnesses, shall be released from regular duties and shall suffer no loss of pay or other benefits if, and only if, they receive prior approval from their immediate supervisor. To minimize disruption in the workplace, the supervisor shall work with the hearing officer, the grievant, and the administration, as necessary, to manage the release of employees who are participants in the conference.

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. If the grievant records the conference, then the supervisor or administrator may also record the conference.

Mutual Agreement of the Parties

The parties involved may mutually consent to modify the procedures as may be necessary to accomplish the goal of resolving disputes in the most efficient and expeditious manner possible.

Withdrawal

An employee may withdraw a dispute at any time. Once withdrawn, a dispute may not be reopened.

Unless modified by written mutual consent, a dispute shall be deemed withdrawn if an employee fails to pursue the dispute or is otherwise deemed to be unreasonably protracting the process, including failure to attend a scheduled Level One or Level Two conference and/or Level Three hearing.

It is expected that an employee will participate in each phase of the dispute resolution process. Therefore, if the employee is unable to attend any phase of the dispute resolution process, the employee must provide written notification of the employee's intent not to attend the conference or hearing. In the case of a Level One or Level Two conference, such notice shall be given to the hearing officer and the District's representative at least 48 hours prior to the start of the conference. In the case of a Level Three hearing, such notice shall be given to the Board President and the District's representative at least 48 hours prior to the start of the hearing.

Informal Resolution of Concerns

Whenever feasible, the Board encourages employees to present and discuss their concerns and complaints through informal conferences with their supervisor, principal, other appropriate campus administrator, and/or department manager or supervisor.

When informal discussions are not feasible and/or fail to resolve the concern or dispute, the employee may obtain a dispute resolution form from the school department or chief schools office, as appropriate, from the Office of Human Resources or by accessing the District's website. The employee may file a request for the formal process described below.

Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

Formal Process

The formal process shall consist of Levels One and Two, which are closed to the public. No members of the public may attend except the designated representative. A Level Three presentation to the Board shall be held during a properly posted Board meeting. The determination of whether the hearing shall be opened to the public or held in closed session is within the discretion of the Board, except that the hearing shall be held in closed session upon request by the employee who is the grievant in the dispute. The only exception to the grievant's election to hold the hearing in closed session shall be when the employee against whom the complaint or a charge is brought makes a written request for an open hearing, in which case the hearing shall be opened to the public.

Level One

An individual who has been unable to informally resolve a concern/dispute about a wage, hour, or condition of work may initiate a formal dispute. The individual shall file a formal dispute by submitting a completed dispute resolution form within 30 days from the date of the alleged action/decision that forms the basis of the concern/dispute and in accordance with the calculation of time frames as set forth above. If the employee did not learn of the action until a later date, the time shall be counted from the date a reasonable person should have learned of the action/decision through reason-

able diligence and in accordance with the calculation of time frames as set forth above.

The completed form must clearly state the dispute regarding an issue of wages, hours, or conditions of work. The form must also clearly state a valid remedy that a supervisor may lawfully grant. A form may be rejected on the grounds that it is not a valid dispute of wages, hours, or conditions of work or that no valid remedy has been stated or may be granted for the alleged act/decision.

The completed dispute resolution form shall be filed with the principal/department head/work location supervisor who has direct supervision of that particular employee.

The immediate supervisor, or other appropriate administrator or designated supervisor assigned to hold the Level One conference, shall schedule a conference with the employee within 10 days after receipt of the completed dispute resolution form in accordance with the calculation of time frames as set forth above. If the employee is represented by an attorney, the Level One hearing officer shall initiate the scheduling process within 10 days of the date of receipt of the dispute resolution form in accordance with the calculation of time frames as set forth above. The duty to initiate scheduling of the Level One conference, for purposes of following prescribed timelines, is fulfilled by the District's Office of Legal Services contacting the employee's attorney, offering available dates and times for the hearing that shall occur at a mutually agreed-upon time, with mutual effort to convene the conference within a prescribed time frame.

There shall be no cross-examination of any witnesses, nor shall this conference in any way resemble an evidentiary hearing. Each side shall simply make presentations to the supervisor or the person assigned to hold the Level One conference within the time restrictions set by that person.

After considering the matters presented at the conference and any other information the supervisor or other person assigned to conduct the Level One conference believes to be relevant to the dispute, that person shall issue a decision or resolution with respect to the dispute held by the employee. The decision/resolution shall be rendered within 10 days from the date of the conference in accordance with the calculation of time frames as set out above. The decision/resolution shall be provided to the employee on the original dispute resolution form filed by the employee, with attachments, as appropriate.

Level Two

In the event the employee is not satisfied with the decision/resolution of the Level One hearing officer, or if the administration fails to

meet the designated time frame for either scheduling a conference or rendering a decision within the allotted time frame, the employee may appeal the dispute to Level Two of the dispute resolution process. If the employee does not have the original dispute resolution form, the employee may substitute a true and correct copy of the same for filing at Level Two.

An employee must file the appeal within 10 days of receipt of the decision/resolution. If the administration's timeline to issue the decision/resolution passes, an employee shall have 10 days from the date the decision/resolution was due to file an appeal. The appeal must be filed with the next line supervisor who is in vertical alignment with the supervisor hearing the dispute at Level One, and a copy must be sent to the Superintendent's designee.

The timelines at Level Two shall run from the date the appeal request is received by the Superintendent's designee. The Superintendent's designee, in consultation with the Superintendent's appropriate direct report, shall identify the Level Two hearing officer, who may or may not be a current District employee. The Level Two hearing officer shall initiate the conference scheduling process within 10 days of the date of receipt of the dispute resolution form in accordance with the calculation of time frames as set forth above. The Level Two hearing officer shall have satisfied their duty to schedule the conference, for purposes of following prescribed timelines, by contacting or having the appropriate Employee Relations personnel contact the employee or their representative, offering available dates and times for the hearing that shall occur at a mutually agreed-upon time, with mutual effort to convene the conference within a prescribed time frame.

If the employee's representative is an attorney, the Level Two hearing officer duty to schedule the conference shall be satisfied, for purposes of following prescribed timelines, by the assigned District attorney contacting the employee's attorney, offering available dates and times for the hearing that shall occur at a mutually agreed-upon time.

If the employee who filed the dispute is unable to attend or cannot secure the representation of choice for the scheduled conference date and time, the Level Two hearing officer shall convene the conference at a mutually agreed-upon date and time.

The conference is not an evidentiary or due process hearing; it is an informal conference for the sole purpose of resolving concerns or disputes brought up by an employee with respect to wages, hours, or conditions of work. The conference shall be recorded by a court reporter paid for by the District. The employee shall be allotted a specific amount of time to present concerns. The employee

may also present witnesses and may submit any available documentation. The administration shall be allotted the same amount of time to present its position and shall be allowed to present witnesses and submit any documentation on the issues addressed at the conference.

There shall be no cross-examination of witnesses, nor shall this conference in any way resemble an evidentiary hearing. Each side shall simply make presentations to the Level Two hearing officer within the time restrictions set by the Level Two hearing officer.

The Level Two hearing officer, after considering the matters presented at the conference and any other information the officer may have, shall arrive at a decision or resolution regarding the dispute. The decision/resolution shall be rendered no later than 10 days from the date on which the Level Two hearing officer receives the transcript of the conference in accordance with the calculation of time frames as set forth above. The decision shall be provided to the employee and the administration and/or their representatives on the original dispute resolution form filed by the grievant or as an affixed attachment to that document. The decision shall be deemed rendered upon confirmation of delivery via facsimile or electronic transmission, with the original to follow, or by proof of mailing of the original document.

Level Three

If either the administration or the employee is not satisfied with the decision/resolution of the Level Two hearing officer, either party may appeal the dispute to Level Three of the dispute resolution process. Additionally, if a decision/resolution is not rendered within the allotted time frame following receipt of the transcript of the conference by the Level Two hearing officer, the employee may appeal to Level Three. No appeal to Level Three may be initiated by the administration without consulting with the Office of Legal Services.

The Board shall not conduct a Level Three hearing until after a Level Two hearing has been convened and a transcript of the hearing is available for the Board's review.

The appeal to the Board shall be filed within 10 days of the decision/resolution. If the Level Two hearing officer's timeline to issue the decision/resolution passes, an employee shall have 10 days from the day the decision/resolution was due to file an appeal. An appeal shall be filed by forwarding the original dispute resolution form or a true and correct copy, including all attachments and decisions rendered, to the Board Services Office, Level One of the Houston ISD's Hattie Mae White Education Support Center. A Level Three hearing request form or a cover letter addressed to the Board President containing a clear request for a hearing must ac-

company the dispute form, attachments, and decisions rendered to date.

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 student or parent notice of the nature of the evidence at least three days before the hearing.

Board Services will make a reasonable effort to schedule complaints in the order they are submitted, in a timely manner. Rescheduling requests must be submitted in writing by the attorney or representative at least 48 hours in advance. A representative may appear on behalf of the grievant, but the grievant must appear in person. If the grievant fails to appear in person, the matter will not proceed.

Both parties, the employee, and the administration representative shall make oral arguments before the Board within time restrictions set by the Board. An appeal to the Board shall be based on the record developed at Level Two. No new documents may be submitted by the employee or the administration as part of the proceedings before the Board. In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of any Level Three presentation it allows. Any Level Three presentation, including the presentation by the employee or the employee's representative, any presentation from the administration or its representative, and questions from the Board with responses shall be recorded by audio recording, video/audio recording, or court reporter, at the discretion of the District.

After hearing and considering the concern of the employee or the administration and the response by the other party, the Board may choose to issue a disposition of the dispute or not to act on it. If the Board chooses to issue a disposition, it shall be done in writing, no later than at the next regularly scheduled Board meeting. The disposition shall be addressed to the employee and to the administration or its representative.

Alternative Entry into the Formal Dispute Resolution Process

An alternative method for entry into the formal dispute resolution process shall be used to address:

1. Concerns that are not under the authority of an employee's immediate supervisor;
2. If an employee is dissatisfied with the result of an investigation concerning specific good-faith allegations of unlawful discrimination on the basis of race, color, religion, sex (including

allegations of sexual harassment), national origin, age, disability, ancestry, marital status, veteran status, political affiliation, sexual orientation, gender identity, and/or gender expression; or

3. The employee exercising constitutional rights.

Concerns of this nature shall specify the individual harm being alleged.

If the employee believes that the alternative entry into the dispute resolution process is appropriate for issues other than those stated in the previous paragraph, the employee shall transmit the dispute resolution form directly to the chief human resources officer, and a copy shall be sent to the employee's immediate supervisor. The chief human resources officer or designee shall determine whether the dispute presented should enter at Level One or Level Two of the dispute resolution process, as well as the appropriate administrator to hear and resolve the dispute. The chief human resources officer or designee shall have five business days from the date the dispute is received to inform both the employee and the hearing officer identified to hear and resolve the dispute, in writing, the procedural entry level for that dispute and the hearing officer for that level, in accordance with the calculation of time frames as set forth above.

Notification from the chief human resources officer or designee to the named hearing officer shall include the original dispute resolution form or a true and correct copy of the same.

Receipt of notification by the hearing officer shall trigger time frames for the designated level of the grievance process in accordance with the calculation of time frames as set forth above, except that the time frame to contact the employee or the employee's representative to schedule a hearing shall not exceed 14 days from the date that the dispute was filed with the chief human resources officer. The dispute shall proceed using the timelines and procedures for the relevant level as outlined above.

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[1] English Dispute Resolution Form: https://resources.finalsite.net/images/v1749056860/houstonisdorg/qnlbddihfplmnrufkrhb/Employee_Dispute_Form_DGBA_English.pdf
[2] Spanish Dispute Resolution Form: https://resources.finalsite.net/images/v1749056860/houstonisdorg/gz1h18nx7jzqryq8l35l/Employee_Dispute_Form_DGBA_Spanish.pdf

DISTRITO ESCOLAR INDEPENDIENTE DE HOUSTON
FORMULARIO DE RESOLUCIÓN DE DISPUTAS

[Consulte la normativa de la Mesa Directiva DGBA(LOCAL) para informarse sobre procedimientos y requisitos.]

NIVEL:

1. Director de la escuela/Supervisor del sitio de trabajo
2. Superintendente Regional /Supervisor inmediato
3. Mesa Directiva

NOMBRE DEL EMPLEADO _____
Teléfono de la casa

DIRECCIÓN DEL EMPLEADO _____
Dirección Ciudad Estado Zip

NÚMERO DE IDENTIFICACIÓN _____ TÍTULO DEL EMPLEADO _____

Correo electrónico _____

Sitio de trabajo _____ Teléfono del sitio de trabajo _____

Nombre, dirección, teléfono y correo electrónico del representante, si tiene uno. _____

_____

Fecha en que ocurrió la disputa/surgió la inquietude _____

Fecha en que se presentó la queja _____

Director/Supervisor del sitio de trabajo _____

Exposición de la disputa/inquietud:
(Adjunte una copia de la prescripción o norma que se alega fue infringida.)

Resolución solicitada:

_____
Firma del empleado Fecha

NIVEL I.

1. Fecha en que la queja fue recibida por el director de la escuela/supervisor del sitio de trabajo _____

2. Disposición del director de la escuela/supervisor del sitio de trabajo:

_____
Firma del director de la escuela/ Supervisor del sitio de trabajo Fecha
(Devuelva el original al empleado. Guarde una copia para su expediente.)

No acepto la decisión presentada aquí y voy a elevar la queja al siguiente nivel.
(Envia una copia al Departamento de Employee Relations.)

_____
Firma del empleado Fecha

NIVEL II.

1. Fecha en que la queja fue recibida por el Superintendente Regional /Supervisor inmediato _____

2. Disposición del Superintendente Regional /Supervisor inmediato:

_____
Firma del Superintendente Regional/ Supervisor inmediato Fecha
(Devuelva el original al empleado. Guarde una copia para su expediente. Envia una copia al Departamento de Employee Relations.)

No acepto la decisión presentada aquí y voy a elevar la queja al siguiente nivel.
(Envia una copia al Departamento de Board Services/Mesa Directiva.)

_____
Firma del empleado Fecha

NIVEL III.

1. Fecha en que la queja fue recibida por Board Services/Mesa Directiva

Note: For the Educators' Code of Ethics, see DHA(LEGAL).

Duty to Report

Report by Any Person

Any person who has reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as required by law. *Family Code 261.101(a)*

Report by Any Professional

Any professional who has reasonable cause to believe that a child has been or may be abused or neglected shall make a report as required by law. The report must be made within 24 hours after the professional first has reasonable cause to believe that the child has been or may be abused or neglected or is the victim of an offense of indecency with a child.

A professional may not delegate to or rely on another person to make the report.

A "professional" is a person who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, juvenile probation officers, and juvenile detention or correctional officers.

Family Code 261.101(b) [See FFG]

Public Servants

All district employees are "public servants" and therefore subject to Title VIII of the Penal Code, regarding offenses against public administration, including restrictions on the acceptance of illegal gifts, honoraria and expenses, and abuse of office. *Penal Code 1.07(a)(41), Title VIII* [See DBD and BBFA]

Electronic Communication Policy

"Electronic communication" means any communication facilitated by the use of any electronic device, including a telephone, cellular telephone, computer, computer network, personal data assistant, or pager. The term includes emails, text messages, instant messages, and any communications made through a website, including a social media website or a social networking website.

A school district shall adopt a written policy concerning electronic communications between a school employee and a student enrolled in the district.

The policy adopted under this section must:

1. Include provisions designed to prevent improper electronic communications between a school employee and a student;

2. Allow a school employee to elect to not disclose to students the employee's personal telephone number or email address; and

3. Include provisions instructing a school employee about the proper method for notifying appropriate local administrators about an incident in which a student engages in improper communications with the school employee.

Education Code 38.027

Retaliation Against Grievant

The district grievance policy prohibits a district employee from retaliating against a student or parent of or person standing in parental relation to a student who files a grievance in accordance with the district grievance policy. If the commissioner determines that an educator has retaliated against a student or parent of or person standing in parental relation to a student who files a grievance under the district's grievance policy, the commissioner may report the educator to SBEC for investigation. *Education Code 26A.001(e)(1), (i)* [See DGBA]

Social Transitioning

The board shall adopt a policy prohibiting an employee of the district from assisting a student enrolled in the district with social transitioning, including by providing any information about social transitioning or providing guidelines intended to assist a person with social transitioning.

"Social transitioning" means a person's transition from the person's biological sex at birth to the opposite biological sex through the adoption of a different name, different pronouns, or other expressions of gender that deny or encourage a denial of the person's biological sex at birth.

A parent of a student enrolled in the district or a district employee may report to the board of trustees of the district a suspected violation of this policy. The board shall investigate any suspected violation and determine whether the violation occurred. If the board determines that a district employee has assisted a student enrolled at the district with social transitioning, the board shall immediately report the violation to the commissioner.

A parent of a student enrolled in a district may seek relief for a violation by filing a grievance through the district's grievance procedure.

Education Code 11.401-.402

Public Information on Private Device

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

1. Forward or transfer the public information to the district or a district server to be preserved as provided by Government Code 552.004(a); or

2. Preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under 552.004(a).

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

Loss of Retirement Annuity for Conviction of Certain Felonies

A person is not eligible to receive a service retirement annuity from the Teacher Retirement System (TRS) if the person is convicted of a qualifying felony and the victim is a student.

"Qualifying felony" means an offense that is punishable as a felony under the following sections of the Penal Code:

1. Section 21.02 (continuous sexual abuse of young child or disabled individual);

2. Section 21.12 (improper relationship between educator and student);

3. Section 22.011 (sexual assault) or Section 22.021 (aggravated sexual assault); or

4. Section 43.24 (sale, distribution, or display of harmful material to minor).

The term includes any federal offense that contains elements that are substantially similar to the elements of a felony offense described above.

Not later than the 30th day after the date of a person's conviction for a qualifying felony, the school at which the person was employed shall provide written notice of the conviction to TRS. The notice must comply with rules adopted by TRS.

Gov't Code 824.009

Transportation or Storage of Firearm in School Parking Area

A district may not prohibit a school employee who holds a license to carry a handgun under Government Code, Chapter 411, Subchapter H, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the district and may not regulate the manner in which the handgun, firearm, or ammunition is stored in the vehicle, provided that the handgun, firearm, or ammunition is not in plain view.

This does not authorize a person to possess, transport, or store a handgun, a firearm, or ammunition in violation of Education Code 37.125, Penal Code 46.03, or other law. [See GKA]

Education Code 37.0815

Tobacco and E-Cigarettes

A board shall prohibit smoking or using e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property.

Enforcement

A board shall ensure that district personnel enforce the policies on school property.

Education Code 38.006(b) [See also FNCD and GKA]

Drug and Alcohol Abuse Program

A board shall prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property. *Education Code 38.007(a)*

Federal Drug-Free Workplace Act

A district that receives a direct federal grant must agree to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the district's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
2. Establishing a drug-free awareness program to inform employees about:
    a. The dangers of drug abuse in the workplace;
    b. The district's policy of maintaining a drug-free workplace;
    c. Available drug counseling, rehabilitation, and employee assistance programs; and
    d. The penalties that may be imposed on employees for drug abuse violations;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the required statement;
4. Notifying the employee in the required statement that as a condition of employment in the grant the employee will:
    a. Abide by the terms of the statement; and
    b. Notify the district of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

5. Notifying the granting agency within 10 days after receiving notice from an employee or otherwise receiving actual notice of a conviction;

6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by 41 U.S.C. section 8104; and

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the above requirements.

41 U.S.C. 8103(a)(1)

Dietary Supplements

Except as provided at Education Code 38.011(b), a district employee may not:

1. Knowingly sell, market, or distribute a dietary supplement that contains performance-enhancing compounds to a primary or secondary education student with whom the employee has contact as part of the employee's duties; or

2. Knowingly endorse or suggest the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance-enhancing compounds by a primary or secondary student with whom the employee has contact as part of the employee's duties.

An employee who violates items 1 or 2, above, commits a Class C misdemeanor offense.

Education Code 38.011

Low-THC Cannabis

A district may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the storage or possession of low-THC cannabis, as authorized by Health and Safety Code Chapter 487. *Health and Safety Code 487.201*

Definitions

For purposes of defining prohibited conduct, the following shall apply:

- "Immorality" is conduct that the Board determines is not in conformity with the accepted principles of right and wrong behavior or that the Board determines is contrary to the moral standards that are accepted within the District.
- "Moral turpitude" is an act of baseness, vileness, or depravity in the private or social duties that a person owes another member of society in general and that is contrary to the accepted rule of right and duty between persons. Examples include but shall not be limited to: theft, attempted theft, swindling, forgery, indecency with a minor, prostitution, and the like.
- "Workplace" is defined as the site for performance of work done in connection with all assignments or duties of one's employment with the District, including any District building or premise; any District-owned or District-approved vehicle, including any vehicle used to transport students to and from school or school activities; or any off-school property during any school-sponsored or school-approved activity, event, or function, such as a field trip or athletic event where students are under the jurisdiction of the District.
- "Electronic media" includes all forms of digital media, such as text messaging, instant messaging, electronic mail (email), and internet and social media. Electronic media also includes all forms of telecommunications, such as landlines, cell phones, and web-based applications.
- "Electronic communication" means any communication facilitated by the use of any wired or wireless technology via the internet or any other electronic media. The term includes communication facilitated by the use of a telephone, email, instant messaging, videoconferencing, or webcam.
- "Social media" covers web-based, interactive communication between individuals, organizations, or communities, which includes but is not limited to web logs (e.g., blogs, electronic forums such as chat rooms, video-sharing websites (e.g., YouTube, Vimeo), editorial comments posted on the internet, and social networking sites including, but not limited to Facebook, Twitter, Google+, Instagram, LinkedIn, Wikispace, and Edmodo.
- "User" is defined as a District employee or District contractor using computers, internet and social media, email, chat

rooms, text messaging, instant messaging, and other forms of electronic communications or equipment for which the District has administrative responsibility. It also applies to any equipment that uses the District's network to access online resources.

General Guidelines

Employees shall be courteous to one another and the public, working together in a cooperative spirit to serve the best interests of the District. All District employees shall be expected to adhere to the standards of conduct set out in the *Educators' Code of Ethics*. [See DH(EXHIBIT)]

All District employees shall attend ethics training at least once every two years. The Office of Ethics and Compliance shall monitor participation in the training and maintain certification of successful completion for all employees in accordance with the District's records retention policy.

Employees wishing to express concern, complaints, or criticism shall do so through appropriate channels. [See DGBA(LOCAL)]

E-Rate Matters

In the case of E-Rate matters, refer to governance provided at CAA.

Employee Responsibilities

Every employee shall be responsible for:

1. Arriving at work on time every day and following attendance procedures;
2. Satisfactorily completing the duties as specified by the job description and/or contract, if any;
3. Relating to colleagues and supervisors with respect, courtesy, and in a professional manner;
4. Spending the workday on work-related activities to the exclusion of personal business;
5. Dressing in a manner that is appropriate for the job assignment, that reflects positively on the District, and that includes the use of all issued safety equipment;
6. Recognizing that employment with the District is not guaranteed, but is dependent on employee performance, budget, and need;
7. Following the established rules of behavior for the District and society in general as defined by local, state, and federal laws;
8. Conducting their duties in a safe manner, following the District's general safety policies and department rules regarding proper use of approved safety equipment and apparel; and

9. Following the directives of the supervisor.

Violations of Standards of Conduct

Employees shall comply with the standards of conduct set out in this policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to their status as District employees. Violation of any policies, regulations, or guidelines, including intentionally making a false claim, offering a false statement, or refusing to cooperate with a District investigation, may result in disciplinary action, including termination of employment. [See DCD and DF series]

Discrimination, Harassment, or Abuse

District employees shall work, supervise others, or be supervised in a work environment free of discrimination, harassment, and abuse. Accordingly, the use of discriminatory remarks and/or epithets regarding an employee's race, sex, age, color, religion, ancestry, handicap or disability, marital status, veteran status, political affiliation, sexual orientation, gender identity, and/or gender expression, or national origin shall not be permitted. Employees shall not engage in prohibited harassment, including sexual harassment, of:

1. Other employees, as defined at DIA.
2. Students, as defined at FFH. [See FFG regarding child abuse and neglect.]

While acting in the course of their employment, employees shall not engage in prohibited harassment, including sexual harassment, of other persons, including Board members, vendors, contractors, volunteers, or parents.

An employee shall report child abuse or neglect as required by law to the Texas Department of Family and Protective Services (TDFPS)/Child Protective Services (CPS) and law enforcement within 24 hours. [See FFG]

Workplace Bullying

The District considers workplace bullying to be unacceptable and will not tolerate it under any circumstances.

Workplace bullying is defined as engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs in the workplace that:

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

2. Is sufficiently severe, persistent, and pervasive that the action or threat creates an intimidating, threatening, or abusive work environment for the employee;

3. Exploits an imbalance of power between the employee perpetrator and the employee victim through written or verbal expression or physical conduct; or

4. Interferes with the victim's employment or substantially disrupts the operation of the work location.

Workplace bullying does not include the legitimate exercise of employee management, including task assignment, employee coaching, and work-related employee discipline.

Allegations of workplace bullying shall be handled in accordance with DIA3(REGULATION).

Relationships with Students

An employee shall not form romantic or other inappropriate social relationships with students. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See DIA and FFH]

As required by law, the District shall notify the parent(s)/guardian(s) of a student with whom an educator is alleged to have engaged in certain misconduct. [See FFF]

Freedom of Speech

The First Amendment of the United States Constitution prohibits the government from creating law that abridges the freedom of speech. Under Article 1, Section 8 of the Texas Constitution, every person shall be at liberty to speak, write, or publish their opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever pass curtailing the liberty of speech. This policy is not intended to abrogate any individual's state and federal constitutional right to free speech on matters of public concern or to inhibit an employee's right to participate in political affairs in the employee's community, state, or nation as provided under Education Code 21.407(b). These rights must be exercised responsibly and within the context of the District's right to maintain and secure an effective and efficient workplace and school operations free from disruptions that detract from the District's objective of educating children.

Electronic Communication

The District recognizes the powerful impact that electronic communication and social media can have on education. The user participation and sharing of information inherent in these media can be beneficial to students and teachers; and when used responsibly and safely, they may be effectively integrated into the educational environment to support traditional instruction.

Use with Students

In accordance with administrative regulations, a certified or licensed employee, or any other employee designated in writing by the Superintendent or designee, may use electronic communication with currently enrolled students only about matters within the scope of the employee's professional responsibilities.

Unless an exception has been made in accordance with the employee handbook or other administrative regulations, an employee shall not use a personal electronic communication platform, application, or account to communicate with currently enrolled students.

Unless authorized above, all other employees are prohibited from using electronic communication directly with students who are currently enrolled in the District. For specific procedures on the following, see the administrative regulation [see DH5(REGULATION)]:

1. Exceptions for family and social relationships;
2. The circumstances under which an employee may use text messaging to communicate with individual students or student groups;
3. Hours of the day during which electronic communication is discouraged or prohibited; and
4. Procedures for establishing professional media sites, limitations to communicating with students, content restrictions, administrative monitoring and review, privacy issues, adherence to applicable laws and policies, and site accessibility to parents and administrators.

Each employee shall continue to comply with the applicable state and federal laws, local policies, administrative regulations, and the Code of Ethics and Standards for Texas Educators including:

- Compliance with the Public Information Act and the Family Educational Rights and Privacy Act (FERPA), including retention and confidentiality of student records; [See CPC and FL]
- Copyright law; and [See CY]
- Technology resources. [See CQ]

In accordance with ethical standards applicable to all District employees [see DH(EXHIBIT)], an employee shall be prohibited from using electronic communications in a manner that constitutes prohibited harassment or abuse of a District student; adversely affects the student's learning, mental health, or safety; includes threats of violence against the student; reveals confidential information about the student; or constitutes an inappropriate communication with a student, as described in the Educators' Code of Ethics.

An employee shall have no expectation of privacy in electronic communications with students. Each employee shall comply with the District's requirements for records retention and destruction to the extent those requirements apply to electronic communication. [See CPC]

Personal Use

Each employee shall be held to the same professional standards in their public use of electronic communication as for any other public conduct. If an employee's use of electronic communication violates state or federal law or District policy, or interferes with the employee's ability to effectively perform their job duties, the employee is subject to disciplinary action, up to and including termination of employment.

Reporting Improper Communication

In accordance with administrative regulations, an employee shall notify their supervisor when a student engages in improper electronic communication with the employee.

Disclosing Personal Information

An employee shall not be required to disclose their personal email address or personal phone number to a student.

Safety Requirements

All employees shall adhere to District safety rules and regulations and shall report unsafe conditions or practices to the appropriate supervisor.

Weapons Prohibited

The District prohibits the use, possession, or display of any firearm, location-restricted knife, club, or prohibited weapon, as defined at FNCG, on District property at all times.

Exceptions

No violation of this policy occurs when:

1. Use or possession of a firearm by a specific employee is authorized by Board action [see the CKE series];
2. A District employee who holds a Texas handgun license stores a handgun, or other firearm, or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the District, provided the handgun, or other firearm, or ammunition is not in plain view; or
3. The use, possession, or display of an otherwise prohibited weapon takes place as part of a District-approved activity supervised by proper authorities. [See FOD]

Tobacco and E-Cigarettes

An employee is prohibited from possessing or using any type of tobacco product, e-cigarette, or any other electronic vaporizing device while on school property, in a District vehicle, or while attending an off-campus school-related activity. An employee is also prohibited from possessing or using any type of nicotine product,

including nicotine pouches, regardless of whether the product contains tobacco, while on District property, in a District vehicle, or while attending an off-campus school-related activity.

An employee's supervisor is authorized to approve an exception to this policy for a smoking cessation product.

Alcohol and Drugs / Notice of Drug-Free Workplace

As a condition of employment, an employee shall abide by the terms of the following drug-free workplace provisions. An employee shall notify the Superintendent in writing within ten days if the employee is convicted for a violation of a criminal drug statute occurring in the workplace in accordance with Responsibility to Report Charges below.

An employee shall not manufacture, distribute, dispense, possess, use, or be under the influence of any of the following substances during working hours while on District property or at school-related activities during or outside of usual working hours:

1. Any controlled substance or dangerous drug as defined by law, including but not limited to marijuana, any narcotic drug, hallucinogen, stimulant, depressant, amphetamine, or barbiturate.
2. Alcohol or any alcoholic beverage.
3. Any abusable glue, aerosol paint, or any other chemical substance for inhalation.
4. Any other intoxicant or mood-changing, mind-altering, or behavior-altering drug.

An employee need not be legally intoxicated to be considered "under the influence" of a controlled substance.

Exceptions

It shall not be considered a violation of this policy if the employee:

1. Manufactures, possesses, or dispenses a substance listed above as part of the employee's job responsibilities;
2. Uses or possesses a controlled substance or drug authorized by a licensed physician prescribed for the employee's personal use; or
3. Possesses a controlled substance or drug that a licensed physician has prescribed for the employee's child or other individual for whom the employee is a legal guardian.

Sanctions

An employee who violates these drug-free workplace provisions shall be subject to disciplinary sanctions. Sanctions may include:

1. Referral to drug and alcohol counseling or rehabilitation programs;
2. Referral to employee assistance programs;
3. Termination from employment with the District; and
4. Referral to appropriate law enforcement officials for prosecution.

Notice — Employees shall have access to this policy via the District's website.

Drug Testing — All employees are subject to reasonable suspicion testing for alcohol and/or drug use. [See DHE(LOCAL)]

An employee who tests positive for prohibited drugs and/or alcohol shall be subject to termination, except when an employee voluntarily admits to alcohol or illegal drug use and commences counseling or rehabilitation prior to an event that leads to the initiation of any alcohol or drug testing. Such an employee must thereafter refrain from using alcohol and/or illegal drugs.

[See also DI(EXHIBIT) for Drug-Free Workplace Requirements and DHE(LOCAL) for alcohol and drug testing]

Unauthorized Persons on District Premises — A District employee shall not bring their own relative, personal aide, or hired helper to assist the employee in the performance of duties on District premises or at school-sponsored activities without prior approval from the principal/work location supervisor and/or Human Resources Department. [See also DC(LOCAL) and GKG(LOCAL)]

Dress and Grooming — An employee's dress and grooming shall be clean, neat, in a manner appropriate for their assignment, and in accordance with any additional standards established by their supervisor and approved by the Superintendent.

Money Lending — The District prohibits loans made by one employee to another with the intent of collecting interest.

Review Meeting — A review meeting will assess the records of employees found to have criminal records that may bar them from continued employment in the District. The meeting shall use the standards for reviewing employees and applicants as set out in DC16(REGULATION).

Criminal History Record Check — Employees shall disclose a prior record when requested to do so at the time of employment. Failure to do so may result in termination of employment.

Responsibility to Report Charges

Employees are required to notify the District within ten days should they be charged with, convicted of, granted deferred adjudication for, or enter a plea of nolo contendere to any felony or any misdemeanor involving moral turpitude. This notification must be made in writing to the Background Department. Failure to do so may result in termination of employment.

Reassignment Pending Final Disposition

An employee shall be subject to being temporarily reassigned when the District becomes aware of any pending charge, previous conviction, or deferred adjudication. The decision to reassign an employee shall be made in accordance with relevant District policies and protocols.

Determination Upon Final Disposition

A determination regarding what action, if any, to take will be made after the final disposition of the pending charge(s) or, in the case of a conviction or deferred adjudication, after a recommendation is made during the criminal history review meeting. In the case of an employee, the final disposition of pending charges means a conviction, deferred adjudication, or dismissal of the charges. An employee's completion of probation or other sentencing is not required for a final disposition by the District.

Reports of Misconduct

The Board encourages employees and others connected with the District to bring forward reports in the form of complaints, comments, and suggestions in order to maintain effective and efficient operations, free from disruptions that detract from the District's main objective of educating children.

This policy applies not only to District employees but is also available to parents, students, patrons of the District, and the general public.

The Board recognizes that there are existing resources through which reports can be made and resolved. These resources include the Employee Hotline, the Employee Assistance Program, the Equal Employment Opportunity, Employee Relations, District Police, and Internal Affairs Departments, as well as other appropriate law enforcement authorities. The Board has appointed the designee in the Employee Relations Department as the clearinghouse for all reports of wrongdoing and for the coordination of resolutions.

EMPLOYEE STANDARDS OF CONDUCT DH1
(REGULATION)

EMPLOYEE MISCONDUCT

1. When there is a case of employee misconduct, work location supervisors may request a Professional Standards investigation. The procedures for making such a request are as follows:

WORK LOCATION INVESTIGATION

a. The work location supervisor or his or her designee investigates an allegation of employee misconduct.

PROFESSIONAL STANDARDS CONSULTATION

b. If the work location investigation reveals that a Professional Standards investigation may be appropriate, the work location supervisor contacts the director, Professional Standards, to discuss the matter.

REQUEST FOR PROFESSIONAL STANDARDS INVESTIGATION

c. If a decision is made that a Professional Standards investigation is appropriate, the supervisor sends a written request for authorization to conduct the investigation to the appropriate next line District superintendent, deputy superintendent, chief of staff, other direct report to the Superintendent, or other designee of the Superintendent. See Reference (a).

AUTHORIZATION TO CONDUCT INVESTIGATION

d. The appropriate District superintendent, deputy superintendent, chief of staff, other direct report to the Superintendent, or other designee of the Superintendent forwards written authorization to conduct the investigation to the director, Professional Standards. See Reference (a).

CONSULTATION

2. This regulation has been through consultation (Administrative: August 13, 2001; Instructional: August 14, 2001; Noninstructional: November 5, 2001).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCE:

(a) DH(EXHIBIT)

GENERAL INFORMATION

1. The following information applies to reports of wrongdoing, unethical conduct, and other concerns in the District. See Reference (a):

DEFINITION

a. Reports of wrongdoing, unethical conduct, and other concerns are defined as reports containing:

- Complaints that bring attention to alleged wrongdoing or unethical conduct as prescribed in Board policy (e.g. misuse of District funds or property or misconduct involving moral turpitude as defined in Board policy). See Reference (a);
- Information regarding violations of the Texas and United States Constitutions; State and Federal statutes (criminal and civil); Administrative Rules and Regulations including, but not limited to, the Texas Educators' Code of Ethics, State Board of Education rules, University Interscholastic League rules, and other similar regulations; and
- Concerns regarding matters that affect the District's major initiatives.

b. A report can be made by any of the following persons:

- All District personnel (full and part-time);
- Students and parents;
- Patrons of the District; and
- Members of the general public.

CONTENTS

c. A report of wrongdoing, unethical conduct, or other concerns must be made in good faith. The individual making the report must have a reasonable belief that the report is accurate at the time the report is made. However, making a report does not require that the individual have first-hand knowledge of a violation. Reports may be made on the basis of second-hand information.

REPORTS MADE IN BAD FAITH

d. Employees who intentionally or knowingly make a bad-faith report containing false allegations are subject to disciplinary action, up to and including termination. Any employee terminated as a result of noncompliance with these procedures will be afforded due process in accordance with District's Board Policies and Procedures.

RECOGNITION OF RIGHTS

e. The guidelines and procedures in this memorandum are not intended to restrict any individual's right to free

speech as a private citizen on matters of public concern under the Texas and United States Constitutions, nor is it to inhibit the employee's right to participate in political affairs in the employee's community, state, or nation as provided by Reference (c). These rights must be exercised responsibly within the context of the District's right to maintain and secure an effective and efficient workplace and school operations free of disruptions that detract from the District's objective of educating children. All reports on matters of private concern must be submitted as indicated in this memorandum, and any reports made by employees on matters of public concern in a manner not indicated in this memorandum must not create a substantial disruption of the workplace or the educational process. [See DG]

CLASSIFICATIONS

2. Classifications for complaints of wrongdoing, along with designations of groups to lead investigations into each classification of complaint, are as follows. The nature of a complaint could, at any time, require a change in the investigative procedures and likewise the units conducting the investigation;

CRIMINAL

a. The criminal classification involves misconduct that violates the Texas Penal Code or other criminal statutes (e.g. theft, sexual misconduct, and the like). The lead investigation will be handled by the District Police Department or the Office of Inspector General or jointly by the two, with assistance from Legal Services and the administration.

FRAUD/WASTE

b. The fraud/waste classification involves financial misappropriation, misuse of District property, or flagrant misuse of District resources. The lead investigation will be handled by the Office of Inspector General with assistance from the District Police Department, Legal Services, and the administration.

EMPLOYEE DISCIPLINE

c. The employee discipline classification involves nonperformance of job duties, inappropriate behavior, noncompliance with the Board policy and procedures, sexual harassment, or discrimination. See Reference (a). The lead investigation will be handled by the Office of Inspector General with assistance from the District Police Department, Legal Services, and the administration.

WORKPLACE CONFLICTS

d. The workplace conflicts classification involves employee and supervisor relationship issues or employment concerns. The lead investigation will be handled by Equal

Employment Opportunity with assistance from the administration.

SUBMITTING A REPORT

3. District employees are encouraged to make reports through their first-line supervisors. If an employee chooses not to use that avenue, reports can be made through the following avenues. Non-employees must use one of the methods at OTHER METHODS, below.

EMPLOYEE ALERTLINE

a. The AlertLine service (1-800-455-9551) may be used to make reports. See Reference (b). Employees will be able to access this toll-free number 24 hours per day, seven days per week. The hotline number should be prominently posted in all work locations.

OFFICE OF INSPECTOR GENERAL

b. Reports may be made directly to the inspector general who will serve as the clearinghouse for all complaints of misconduct. Reports may be made in person, by telephone conference, or in writing.

OTHER METHODS

c. There are other methods by which students, parents, employees, and the community can pursue resolutions to complaints and concerns. These include:

- The dispute resolution process;
- The consultation process;
- The parent and student grievance process [See FNG];
- The bid hearing process;
- The discrimination complaint process;
- The sexual harassment complaint process; and [See DIA or FFH]
- Issues related to E-Rate matters. [See CAA]

RESPONDING TO A REPORT

4. The District intends to investigate all complaints. Procedures and guidelines are as follows:

IMMEDIATE SUPERVISORS

a. When an employee brings to his or her immediate supervisor a concern, which is not covered by the dispute resolution process or any other District procedure, it is the responsibility of the supervisor to seek a resolution to the concern informally. The supervisor must evaluate the merits of the concern and determine to what extent an investigation is needed. All efforts to resolve the concern must be documented by the supervisor and reported immediately to the inspector general.

APPEALS

b. If the employee is not satisfied with the immediate supervisor's resolution, the employee should discuss the concern with the next level supervisor up to the Superintendent of Schools or a designee. Unlike the dispute resolution process, this process does not extend to the District Board of Education. Any resolution through this informal process is final with the Superintendent of Schools or a designee. This procedure does not preclude employees from reporting directly to the inspector general; utilizing the District AlertLine; or appearing before the Board at its public hearing of citizens.

INSPECTOR GENERAL

c. The inspector general is responsible for receiving, processing, and tracking the reports received through the District AlertLine and other avenues (e.g. telephone calls, written correspondence, and the like). The information from each report is recorded on a complaint form and then entered through a centralized Case Management and Tracking System. A code number is assigned to each case and referred by the inspector general to the appropriate investigative unit(s) for the initiation of a preliminary investigation. Upon determination of the merits of the report, the investigative unit will then determine to what extent a more detailed investigation is needed. Where appropriate, the inspector general will facilitate resolution through the appropriate department, up to and including the superintendent of schools.

CASE MANAGEMENT AND TRACKING SYSTEM

d. The purpose of the Case Management and Tracking System is to ensure effective, timely investigations of reported complaints. Guidelines are as follows:

- Supervisors are required to submit any reports of wrongdoing within their areas of responsibility immediately. Cases that are deemed minor in nature and that are resolved through the informal process should be reported to the inspector general to become a part of the overall Case Management database. (Such cases will not be assigned for investigation.);
- A case will be processed and assigned within 24 hours of receipt;
- The unit(s) assigned a case will immediately initiate a preliminary investigation. The extent of the investigation will be unique to each case;

- Status reports will be submitted weekly by the investigative unit(s) to the inspector general, and by the inspector general to the superintendent of schools for the duration of the investigation; and
- After the investigation is completed, the individual making the complaint, if known, will be informed about the resolution of the complaint.

ASSIGNING REPORTS TO INVESTIGATIVE UNITS

e. Reports may be assigned to one of the following investigative units by the inspector general:

- Employee Assistance Program;
- Equal Employment Opportunity;
- District Police Department;
- Office of Inspector General Auditing Division;
- Office of Inspector General Investigations Division; or
- Appropriate law enforcement authorities.

CONFIDENTIALITY

f. To the extent possible and as permitted by law, every effort will be made to maintain confidentiality for the person submitting the report; however, under certain circumstances, the identity of the reporter may be required in order to prevent harm to the health, safety, or welfare of District students, employees, or property.

PROHIBITION AGAINST RETALIATION

5. An employee will not be suspended, terminated, or otherwise discriminated against because the employee has made a report of wrongdoing, unethical conduct, or other concerns. An employee will not be suspended, terminated, or otherwise discriminated against because the employee has reported a violation of law to an appropriate law enforcement authority if the employee report has been made in good faith. A statement of this prohibition against retaliation will be posted in a prominent place in each District building.

SUPERVISOR FAILURE TO REPORT MISCONDUCT

6. All work location supervisors who know of any serious act of misconduct within their areas of responsibility, either directly or indirectly, and who intentionally or knowingly fail to report such an incident or to comply with the guidelines and procedures herein, could be subject to disciplinary action, up to and including termination.

CONSULTATION

7. This regulation has been through consultation (Administrative: April 8, 2008; Instructional: April 3, 2008; Noninstructional: April 8, 2008).

MAINTENANCE RESPONSIBILITY

8. The inspector general, Office of Inspector General, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DH(LOCAL)

(b) Board Policy CAA and Administrative Regulation CAA

(c) Texas Education Code 21.407(b)

REASONABLE SUSPICION TRAINING FOR DRUGS AND ALCOHOL

1. In accordance with federal law and Board policy, all supervisors are required to have two hours of reasonable suspicion training, one hour each for drugs and alcohol. [See References (a), (b), (c), (d), (e), and (g)] The training is part of the District Drug-Free Workplace Program and is offered through the Drug-Free Workplace Department, via quarterly training sessions, as well as private sessions for 50 or more supervisors. [See Reference (f)] A refresher course must be taken every four years.

CONSULTATION

2. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

3. The manager, Employee Support Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DH(LEGAL)

(b) Board Policy DH(LOCAL)

(c) Board Policy DHE(LEGAL)

(d) Board Policy DHE(LOCAL)

(e) Board Policy DI(EXHIBIT)

(f) DH4(REGULATION)

(g) 49 Code of Federal Regulations 382.603 Training for Supervisors

DRUG-FREE WORKPLACE PROGRAM

1. The District Drug-Free Workplace Program was developed in response to federal requirements for the testing of all transportation employees. See Reference (i). The Board of Education decided to apply the Drug-Free Workplace Program not just to transportation employees, but to all employees performing driving or safety-sensitive functions (including police officers who carry firearms, motor vehicle mechanics and inspectors, transportation aides, operators of hazardous equipment, custodial staff, and Food Services employees). See References (a), (b), (c), (d), (e), and (j). Employees in, or applying for, driving or safety-sensitive positions are subject to pre-employment testing or testing before transferring to such a position; reasonable suspicion testing; testing after an accident or unsafe practice; testing upon returning to duty after an absence; testing as part of a follow-up to counseling or rehabilitation; and testing before transferring to another position. See References (a), (b), (c), and (d). In addition, all employees are subject to reasonable suspicion testing. See References (c) and (d).

COMPONENTS OF THE DRUG-FREE WORKPLACE PROGRAM

2. The Drug-Free Workplace Program has the following three principal components:

INFORMATION DISTRIBUTION

a. All applicants for driving or safety-sensitive positions, whether as new or transferring employees, are provided with information about the Drug-Free Workplace Program and its provisions for testing employees in such positions. Applicants for all positions in the District are provided with information about the Drug-Free Workplace Program and its provision for reasonable suspicion testing of all employees. Annual acknowledgement letters are sent to all employees in safety-sensitive positions with this regulation attached.

SUPERVISORY TRAINING

b. Drug- and alcohol-related training is provided to all supervisors of employees in driving and safety-sensitive positions, and to all supervisors who have the authority to order reasonable suspicion tests. Attendance and participation in the training are mandatory and will be documented. Once initial training is taken, refresher training is required every four years. See References (c), (d), and (h).

TESTING

c. Specific information about procedures for the various types of testing is contained in Reference (f). Information about obtaining District Police Department assis-

tance related to reasonable suspicion testing is contained in Reference (g).

CONSULTATION

3. This regulation has been through consultation (Administrative: December 11, 2007; Instructional: March 6, 2008; Noninstructional: March 11, 2008).

MAINTENANCE RESPONSIBILITY

4. The manager, Employee Support Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DH(LEGAL)

(b) Board Policy DH(LOCAL)

(c) Board Policy DHE(LEGAL)

(d) Board Policy DHE(LOCAL)

(e) Board Policy DI(EXHIBIT)

(f) DHE4(REGULATION)

(g) DHE1(REGULATION)

(h) DH3(REGULATION)

(i) 49 Code of Federal Regulations, Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

(j) Safety Sensitive Positions for HISD Random Drug/Alcohol Testing

Social Media

1. The District recognizes the powerful impact that social media technology can have on education since the technology's very existence relies on the active participation, connectivity, and sharing of information among its users.

Use within the District

a. The District believes that the communication and collaboration inherent in the use of social media can enhance learning among students and, when used responsibly and safely, may be effectively integrated into the educational environment to support traditional instruction.

Social media have the potential to benefit the District curriculum and school activity, but misuse of these media can also expose users to inappropriate, offensive, and harmful material and behavior. Policy and regulations are necessary to ensure that all such communication that is supported by the District is safe and adheres to established standards of conduct. [See CQ(EXHIBIT)]

Expectations for Employee Conduct with Social Media

b. Employees are held to the same professional standards as they are in any other public forum as outlined by state and federal law, local policies, and the Code of Ethics and Standard Practices for Texas Educators. In addition, these standards of conduct apply to the employees' use of any form of social media. [See DH(LOCAL) and DH(EXHIBIT)]

Definitions

2. For the purposes of this memorandum, the following definitions will apply:

Social Media

a. "Social media" covers web-based, broadcast, or interactive communication between individuals, organizations, or communities, which includes, but is not limited to, web logs (e.g., blogs), electronic forums such as chat rooms, video-sharing websites (e.g., YouTube, Vimeo), editorial comments posted on the Internet, and social networking sites, including, but not limited to, Facebook, Twitter, Google+, Instagram, LinkedIn, and Wikispace.

Communication

b. "Communication" means the two-way transmission of web-based digital information between two or more people using District technology resources. When employees and District contractors communicate with students and parents, the information directly relates to the mission of the District, school, or classroom; supports the development of students in a positive way; safeguards the confidentiality of student and employee records; and/or enhances community engagement with the District.

Certified or Licensed Employee

c. “Certified or licensed employee” means a person employed in a position requiring certification by the State Board of Educator Certification or a professional license, and whose job duties may require the employee to communicate electronically with students. The term includes, but is not limited to, teachers, school counselors, principals, assistant principals, librarians, paraprofessionals, nurses, educational diagnosticians, licensed therapists, and athletic trainers.

Professional Social Media

d. “Professional social media” means a work-related online or Internet site or account that is established using District technology resources and is developed and managed at the school or department.

Personal Social Media

e. “Personal social media” means an online or Internet site or account that an employee has established or manages for non-work-related purposes.

Professional Network Site

f. “Professional network site” is a website that promotes connections, news feeds, and collaborations among people in like professions or among people who share similar employment experiences and responsibilities.

Posting

g. “Posting” means to display, upload, or share content such as video, pictures, comments, or remarks on a social media platform.

Use of District Technology Resources

3. An employee who wishes to communicate with students and parents through social media must establish a professional social media site that uses District technology resources, is open and accessible to administrators and parents, and addresses work-related and/or instructional issues.

Privacy Limitations

a. When accessing a professional social media site using District technology resources, employees should have no expectation of privacy on items they post, as the District reserves the right to monitor employees’ online activities. In addition, while employees are encouraged to set their social media privacy settings on the highest level, they should be aware that there are limitations to online privacy settings in general.

Authorized Personnel

b. Only a certified or licensed employee, or any other employee designated by the Superintendent of Schools or campus principal, may communicate through social media with students who are currently enrolled in the District. All other employees are prohibited from communicating with students through social media.

Compliance Provisions

c. Principals and department heads (or designees) are responsible for implementing appropriate monitoring systems for social media established and managed at their schools and departments. An employee who uses social media to communicate with students will observe the following:

- The employee will limit communications to matters within the scope of the employee's professional responsibilities (e.g., for classroom teachers, matters relating to class work, homework, and tests; for an employee with an extracurricular duty, matters relating to the extracurricular activity) or to topics that encourage community engagement within the District.
- The employee does not have a right to privacy with respect to communications with students and parents.
- The employee continues to be subject to applicable state and federal laws, local policies, administrative regulations, and the Code of Ethics and Standard Practices for Texas Educators, including:

  (a) Compliance with the Public Information Act and the Family Educational Rights and Privacy Act (FERPA), including retention and confidentiality of student records. [See CPC and FL]

  (b) Copyright law. [See CY(LOCAL)]

  (c) Prohibitions against soliciting or engaging in sexual conduct or a romantic relationship with a student. [See DH(LOCAL), DHB(LEGAL), and DIA(LOCAL)]

  (d) Prohibitions against obscene, discriminatory, defamatory, or threatening language, including harassment and cyberbullying among students and others. [See FFH and FFI]

  (e) Prohibitions against inciting violence or disruptive action.

  (f) Prohibitions against selling or purchasing illegal items or substances.

(g) Prohibitions against using social media for personal financial gain, advertising, promotion, and commerce or for conducting for-profit business and/or political activities.

(h) Prohibitions against posing as another individual for the purpose of publishing material in his or her name that defames or ridicules him or her.

(i) Media releases required for all District students, employees, and contractors whose images (photographs and videos) are posted online.

- Upon request from the administration, an employee will provide social network site(s) or other information regarding the method(s) of social media the employee uses to communicate with any one or more currently enrolled or former students.
- Upon written request from a parent or student, the employee will discontinue communicating on a one-to-one basis with the student through professional social media.
- The employee will be responsible for reporting to his or her principal or department head and documenting any inappropriate use or content that he or she sees on a professional social media site. Inappropriate content using District technology resources may lead to disciplinary and/or legal action.
- The employee must clearly state that he or she is expressing personal views and is not representing the District in any official capacity, unless there is written authorization from the Superintendent of Schools or designee.

Disciplinary Actions

d. Inappropriate use of social media with students that interferes with the employee's ability to effectively perform his or her job duties may result in disciplinary action, up to and including termination of employment.

School and Department Social Media Sites

4. Each school and department is responsible for the development, content management, and monitoring of any professional social media sites generated by any personnel from that work location. The principal or department head will approve the purpose of each site, its intended audience, and

subject matter and will assign a site administrator. Each site administrator will be responsible for:

a. Posting appropriate, accurate, and timely school- or work-related content on the site.

b. Reviewing comments from followers of the site prior to posting to ensure that all site content conforms to District standards. This function may be performed by or in conjunction with a designated workplace committee.

c. Removing comments that violate District standards. The comments function on school or department sites may also be disabled as deemed appropriate or necessary by the principal or district leadership and site administrator.

Retention of Social Media Records

5. Each employee will comply with the District's requirements for records retention and destruction. [See CPC]

Training

6. The District will provide training opportunities and/or materials to assist employees and parents in understanding acceptable and appropriate use of school- or department-based social media.

Expectation of Professional Conduct

7. As role models for the District's students, employees are responsible for their public conduct even when they are not acting as District employees. Employees will be held to the same professional standards in their public use of social media as they are for any other public conduct. If an employee's use of social media interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment. [See DH and GKA]

If an employee wishes to use a social network site or similar media for personal purposes, the employee is responsible for the content on the employee's page, including content added by the employee, the employee's friends, or members of the public who can access the employee's page and for web links on the employee's page. The employee is also responsible for maintaining privacy settings appropriate to the content.

Compliance Provisions for Personal Use of Social Media

8. When using social media for personal purposes, employees will observe the following guidelines:

- An employee may not establish or update the employee's personal social network(s) using the District's computers, network, or equipment. However, the District allows reasonable access to professional networking

sites, such as LinkedIn, using District technology resources, as long as such access does not interfere with the employee's primary job performance.

- The employee continues to be subject to applicable state and federal laws, local policies, administrative regulations, and the Code of Ethics and Standard Practices for Texas Educator, even when communicating regarding personal and private matters, regardless of whether the employee is using private or public equipment on or off campus. These restrictions include:

  (1) Confidentiality of student records. [See FL]

  (2) Confidentiality of health or personnel information concerning colleagues, unless disclosure serves lawful professional purposes or is required by law. [See DH(EXHIBIT)]

  (3) Confidentiality of District records, including educator evaluations and private e-mail addresses. [See GBA]

  (4) Copyright law. [See CY(LOCAL)]

  (5) Prohibition against harming others by knowingly making false statements about a colleague or the school system. [See DH(EXHIBIT)]

  (6) Prohibitions against obscene, discriminatory, defamatory, or threatening language, including harassment and cyberbullying among students and others. [See CQ and FFI]

  (7) Media releases required for all District students, employees, and contractors whose images (photographs and videos) are posted online.

Any employee communication with currently enrolled students and their parents may be considered to be an official educational record; therefore, to ensure adherence to the District's requirements for records retention and destruction, the preferred method of electronic communication between employees and students and/or parents is the official District communication methods (e.g., e-mail) issued to the employee.

Consultation

9. This regulation has been through consultation (Administrative: June 6, 2017; Instructional: June 1, 2017; Noninstructional: June 6, 2017).

Maintenance Responsibility

10. The chief Human Resources officer, Human Resources, is responsible for the maintenance of this regulation.

Effective Date

11. This regulation will be effective as of the adoption date, August 7, 2017.

Code of Ethics

The State Board for Educator Certification (SBEC) shall propose rules that provide for the adoption, amendment, and enforcement of an educator's code of ethics. SBEC is solely responsible for enforcing the ethics code for purposes related to certification disciplinary proceedings.

Education Code 21.041(b)(8); 19 TAC 247.1(c)

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

19 TAC 247.1(b)

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 SBEC and its certification process.

Standard 1.2. The educator shall not intentionally, knowingly, or recklessly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.

Standard 1.3. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.

Standard 1.4. The educator shall not use institutional or professional privileges for personal or partisan advantage.

Standard 1.5. The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or that are used to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.

Standard 1.6. The educator shall not falsify records, or direct or coerce others to do so.

Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws.

Standard 1.8. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.

Standard 1.9. The educator shall not make threats of violence against school district employees, school board members, students, or parents of students.

Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.

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

Standard 1.12. The educator shall refrain from the illegal use, abuse, or distribution of controlled substances, prescription drugs, and toxic inhalants.

Standard 1.13. The educator shall not be under the influence of alcohol or consume alcoholic beverages on school property or during school activities when students are present.

19 TAC 247.2(1)

Ethical Conduct Toward Professional Colleagues

Standard 2.1. The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.

Standard 2.2. The educator shall not harm others by knowingly making false statements about a colleague or the school system.

Standard 2.3. The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.

Standard 2.4. The educator shall not interfere with a colleague’s exercise of political, professional, or citizenship rights and responsibilities.

Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.

Standard 2.6. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.

Standard 2.7. The educator shall not retaliate against any individual who has filed a complaint with the SBEC or who provides information for a disciplinary investigation or proceeding under this chapter.

Standard 2.8. The educator shall not intentionally or knowingly subject a colleague to sexual harassment.

19 TAC 247.2(2)

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, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

1. The nature, purpose, timing, and amount of the communication;
2. The subject matter of the communication;
3. Whether the communication was made openly or the educator attempted to conceal the communication;
4. Whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;
5. Whether the communication was sexually explicit; and
6. Whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

19 TAC 247.2(3)

Note: This policy applies to a district of innovation under Education Code, Chapter 12A. [See AF]

Permissive Reports

The superintendent may notify the State Board for Educator Certification (SBEC) of any educator misconduct that he or she believes in good faith may be subject to sanctions under 19 Administrative Code, Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, and/or Chapter 247, Educators' Code of Ethics. *19 TAC 249.14(d)*

Required Reports

A superintendent shall notify SBEC if:

1. An educator employed by or seeking employment with the district, or an applicant or holder of an SBEC certificate, has a criminal record and the district obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established by the Texas Department of Public Safety under Government Code 411.0845;
2. An educator's employment at the district was terminated and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct After Termination or Resignation, below];
3. The educator resigned and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct After Termination or Resignation, below]; or
4. The superintendent becomes aware of evidence than an educator employed by the district engaged in the misconduct listed below [see Reportable Misconduct Regardless of Termination or Resignation, below].
5. The educator engaged in conduct that violated the assessment instrument security procedures established under Education Code 39.0301.

Education Code 22A.051, 22.087; 19 TAC 249.14(d)

Reportable Misconduct Regardless of Termination or Resignation

The superintendent shall make a report to SBEC under item 4 [Required Reports], above, if an educator:

1. Abused or otherwise committed an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9 of the Penal Code, Justification Excluding Criminal Responsibility, regardless of whether the conduct resulted in bodily injury;

2. Was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact with a student or minor;

3. Engaged in inappropriate communications with a student or minor; or

4. Failed to maintain appropriate boundaries with a student or minor.

Education Code 22A.051(2)(A)-(D), (4)

Deadline to Report

The superintendent must notify SBEC by filing a report not later than 48 hours after the superintendent receives notice from a principal [see DPA(LEGAL)] or becomes aware of evidence of misconduct described above [Reportable Misconduct Regardless of Termination or Resignation]. *Education Code 22A.051(d)(2)*

Reportable Misconduct After Termination or Resignation

A superintendent shall make a report to SBEC under items 2 and 3 at Required Reports, above, if an educator was terminated or resigned and there is evidence that the educator:

1. Abused or otherwise committed an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9 of the Penal Code, Justification Excluding Criminal Responsibility, regardless of whether the conduct resulted in bodily injury;

2. Was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact with a student or minor;

3. Engaged in inappropriate communications with a student or minor;

4. Failed to maintain appropriate boundaries with a student or minor;

5. Possessed, transferred, sold, or distributed a controlled substance, as defined by Health and Safety Code Chapter 481, or by 21 U.S.C. 801 et seq.;

6. Illegally transferred, appropriated, or expended school property or funds;

7. Attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or

8. Committed a criminal offense, or any part of a criminal offense, on school property or at a school-sponsored event.

Education Code 22A.051(a); 19 TAC 249.14(d)

Deadline to Report After Termination or Resignation

The superintendent shall notify SBEC in writing by filing a report within seven business days after the date the superintendent receives notice from a principal [see DPA]or knew about an educator's termination or resignation following an alleged incident of misconduct described above at Reportable Misconduct After Resignation or Termination or about an educator's criminal record described under Education Code 22A.051(d). *Education Code 22A.051(d)(1)* [See Required Reports, above]

Investigation After Termination or Resignation

A superintendent shall complete an investigation of an educator that involves evidence that the educator may have engaged in misconduct described above at Reportable Misconduct After Termination or Resignation, items 1, 2, 3, or 4, despite the educator's resignation from employment before completion of the investigation. *Education Code 22A.051(b); 19 TAC 249.14(d)(3)(C)*

Contents of Report

The report must be in writing and in a form prescribed by SBEC and filed through a confidential and secure internet portal developed and maintained by TEA under Education Code 22A.155. The report shall include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator and the factual circumstances requiring the report and the subject of the report by providing the following available information:

1. Name and any aliases;
2. Certificate number, if any, or social security number;
3. Last known mailing address and home and daytime phone numbers;
4. All available contact information for any alleged victim or victims;
5. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
6. Current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
7. Involvement by a law enforcement or other agency, including the name of the agency.

Education Code 22A.051(e); 19 TAC 249.14(f)

The name of the student or minor is not public information under the Public Information Act. [See GBAA] *Education Code 22(A).051(j)*

Notice

To the Board and Educator

A superintendent shall notify the board and the educator of the filing of a written report with SBEC. *Education Code 22A.051(f)*

Before Accepting Resignation

Before accepting an employee's resignation that requires filing a report, the superintendent shall inform the educator in writing that a report will be filed and that sanctions against his or her certificate may result as a consequence. *19 TAC 249.14(d)(3)(A)*

Policy to Notify Parents

The board shall adopt a policy under which notice is provided to the parent or guardian of a student with whom an educator is alleged to have engaged in misconduct described Reportable Conduct Regardless of Termination or Resignation. [See FFF] *Education Code 22A.053.*

Sanctions for Failure to Report

SBEC shall determine whether to impose sanctions, including an administrative penalty against a superintendent who fails to file a report. *Education Code 22A.051(h); 19 TAC 249.14(d), (h), .15(b)(4)*

Administrative Penalty

If a superintendent is required to file a report and fails to file the report by the required date, SBEC may impose an administrative penalty of not less than $500 and not more than $10,000. SBEC may not renew the certification of an educator against whom an administrative penalty is imposed until the penalty is paid. *Education Code 22A.051(k)*

Criminal Offense

A superintendent required to file a report commits a state jail felony if the superintendent fails to file the report by the required date with intent to conceal an educator's criminal record or alleged incident of misconduct. *Education Code 22A.051(l)*

Immunity

A superintendent or principal who, in good faith and while acting in an official capacity, files a report with SBEC or communicates with another superintendent or principal concerning an educator's criminal record or alleged incident of misconduct is immune from civil or criminal liability that might otherwise be incurred or imposed. *Education Code 22A.051(g)*

Definitions

Abuse

“Abuse” has the meaning assigned by Family Code 261.001(1) and includes any sexual conduct involving a student or minor. *Education Code 22A.001(1)*

“Abuse” includes the following acts or omissions:

1. Mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning;
2. Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an

observable and material impairment in the child's growth, development, or psychological functioning;

3. Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; or

4. Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

5. Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuing sexual abuse of a young child or disabled individual under Penal Code 21.02, indecency with a child under Penal Code 21.11, improper relationship between educator and student under Penal Code 21.12, sexual assault under Penal Code 22.011, or aggravated sexual assault under Penal Code 22.021;

6. Failure to make a reasonable effort to prevent sexual conduct as defined by Penal Code 43.01, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Penal Code 20A.02(a)(7) or (8), solicitation of prostitution under Penal Code 43.05(a)(2);

7. Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Penal Code 43.21, or pornographic;

8. The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

9. Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Penal Code 43.25;

10. Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Penal Code 20A.02(a)(5), (6), (7), or (8), or the failure to make a reasonable effort to prevent a child from be-

ing trafficked in a manner punishable as an offense under any of those sections; or

11. Forcing or coercing a child to enter into a marriage.

19 TAC 249.3(1); Family Code 261.001(1)

Reported Criminal History

"Reported criminal history" means information concerning any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, criminal information, convictions, deferred adjudications, and probations in any state or federal jurisdiction. *19 TAC 249.3(44)*

Solicitation of a Romantic Relationship

"Solicitation of a romantic relationship" means deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or patterns of exclusivity, but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:

1. Behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior include:

    a. The nature of the communications;

    b. The timing of the communications;

    c. The extent of the communications;

    d. Whether the communications were made openly or secretly;

    e. The extent that the educator attempts to conceal the communications;

    f. If the educator claims to be counseling a student, SBEC may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and

g. Any other evidence tending to show the context of the communications between educator and student.

2. Making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images.

3. Making sexually demeaning comments to a student.

4. Making comments about a student's potential sexual performance.

5. Requesting details of a student's sexual history.

6. Requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator.

7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party.

8. Inappropriate hugging, kissing, or excessive touching.

9. Providing the student with drugs or alcohol.

10. Violating written directives from school administrators regarding the educator's behavior toward a student.

11. Grooming behaviors, considered in context and on the totality of circumstances, including, but not limited to:

    a. Showing the student special attention;

    b. Giving the student individual gifts, money, or privileges;

    c. Isolating the student;

    d. Exposing the student to adult topics or conversations and/or media that is not age appropriate; or

    e. Meeting behind closed doors with the student without another adult present.

12. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage.

13. Any other acts tending to show that the educator solicited a romantic relationship with the student.

19 TAC 249.3(51)

[See DHC for provisions regarding solicitation of sexual contact.]

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

Definitions

"Abuse" has the meaning assigned by Family Code 261.001(1) and includes any sexual conduct involving a student or minor. [See DHB] *Education Code 22A.001(1)*

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

19 TAC 153.1201(b), (d)

Misconduct of Noncertified Employees

Education Code 22A.052 applies to a district employee who does not hold certification issued by SBEC or a school district teaching permit.

Reportable Misconduct

A person who serves as the superintendent shall notify the commissioner if the superintendent obtains criminal history record information relating to or becomes aware of evidence that an employee:

1. Abused or otherwise committed an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9 of the Penal Code, Justification Excluding Criminal Responsibility, regardless of whether the conduct resulted in bodily injury;
2. Was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact, defined below, with a student or minor;
3. Engaged in inappropriate communications with a student or minor; or
4. Failed to maintain appropriate boundaries with a student or minor.

Education Code 22A.052(b)

Deadline to Report

The superintendent must notify the commissioner by filing a report with the commissioner not later than 48 hours after the superintendent receives notice from a principal [see DPA(LEGAL)], knew about the termination or resignation following an allegation of misconduct, or becomes aware of evidence of misconduct described above. *Education Code 22A.052(e)*

Investigation After Termination or Resignation

A superintendent shall complete an investigation of an employee that involves evidence that the employee may have engaged in misconduct described above [Reportable Misconduct], despite the employee's resignation from district employment before completion of the investigation. *Education Code 22A.052(c)*

Contents of Report

The report must be in writing and in a form prescribed by the commissioner and filed through an internet portal developed and maintained by the Texas Education Agency (TEA). The report shall include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an employee and the factual circumstances requiring the report and the subject of the report by providing the following available information:

1. The name or names of any student or minor who is the victim of abuse or unlawful conduct by an employee;
2. The factual circumstances requiring the report and the subject of the report by providing the following available information:
    a. Name and any aliases and certificate number, if any, or social security number;
    b. Last known mailing address and home and daytime phone numbers;
    c. All available contact information for any alleged victim or victims;
    d. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
    e. Current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
    f. Involvement by a law enforcement or other agency, including the name of the agency.

Education Code 22A.052(f); 19 TAC 153.1203(d)

The name of the student or minor is not public information under Government Code Chapter 552 (Public Information Act) [see GBAA]. *Education Code 22A.052(j)*

Notice to the Board and Employee

A superintendent shall notify the board and the employee of the filing of the report. *Education Code 22A.052(g)*

Immunity

A superintendent who in good faith and while acting in an official capacity files a report or makes a notification is immune from civil

or criminal liability that might otherwise be incurred or imposed. *Education Code 22A.052(h)*

Sanctions for Failure to Report

The commissioner shall refer an educator who fails to file a report to SBEC, which will determine whether to impose sanctions against the educator. *Education Code 22A.052(i)*

Criminal Offense

A superintendent required to file a report commits a state jail felony if the superintendent fails to timely file the report with intent to conceal an employee's criminal record or alleged incident of misconduct. *Education Code 22A.052(k)*

Review of District Records

The commissioner may review district records to ensure compliance with the requirement to report misconduct. *Education Code22A.052(l)*

Solicitation of Sexual Contact

"Solicitation of sexual contact" means deliberate or repeated acts that can be reasonably interpreted as the solicitation by an employee of a relationship with a student that is sexual in nature. Solicitation of sexual contact is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an employee of sexual contact with a student:

1. Behavior, gestures, expressions, or communications with a student that are unrelated to the employee's job duties and evidence a sexual intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the intent of such communications or behavior, include, without limitation:
    a. The nature of the communications;
    b. The timing of the communications;
    c. The extent of the communications;
    d. Whether the communications were made openly or secretly;
    e. The extent that the employee attempts to conceal the communications;
    f. If the employee claims to be counseling a student, the commissioner of education may consider whether the employee's job duties included counseling, whether the employee reported the subject of the counseling to the student's guardians or to the appropriate school person-

nel, or, in the case of alleged abuse or neglect, whether the employee reported the abuse or neglect to the appropriate authorities; and

g. Any other evidence tending to show the context of the communications between employee and student;

2. Making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;

3. Making sexually demeaning comments to a student;

4. Making comments about a student's potential sexual performance;

5. Requesting details of a student's sexual history;

6. Requesting a date, sexual contact, or any activity intended for the sexual gratification of the employee;

7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;

8. Inappropriate hugging, kissing, or excessive touching;

9. Providing the student with drugs or alcohol;

10. Violating written directives from school administrators regarding the employee's behavior toward a student;

11. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and

12. Any other acts tending to show that the employee solicited sexual contact with a student.

19 TAC 153.1201(a)

[See DHB for provisions regarding solicitation of a romantic relationship.]

Searches — General Rule

Citizens, including district employees, have a right to be free from unreasonable searches and seizures. *U.S. Const. Amendment IV; Tex. Const. Art. I, Sec. 9*

A district may search an employee or an employee's property if:

1. There are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct; and

2. The search is reasonably related in scope to the circumstances that justified the interference in the first place.

O'Connor v. Ortega, 480 U.S. 709 (1987); New Jersey v. T.L.O., 469 U.S. 325 (1985)

In addition, a district may search an employee's workplace for non-investigatory, work-related purposes, if there are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct. *O'Connor v. Ortega, 480 U.S. 709 (1987)*

Drug/Alcohol Testing

Blood, urine, and breath tests of public employees to determine drug use are searches under the Fourth Amendment of the U.S. Constitution. *Skinner v. Railway Labor Executives Ass'n, 489 U.S. 602 (1989)*

Random Drug Testing

A district may conduct drug tests, without a warrant and without individualized suspicion, when the test serves special governmental needs that outweigh the individual's privacy expectation. *Skinner v. Railway Labor Executives Ass'n, 489 U.S. 602 (1989); Nat'l Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989)*

Safety-Sensitive Positions

Random alcohol and drug testing of employees in "safety-sensitive" positions may be permissible when the intrusiveness of the search is minimal and a board is able to demonstrate that the drug-testing program furthers its interest in ensuring the physical safety of students. "Safety-sensitive" positions include those that involve the handling of potentially dangerous equipment or hazardous substances in an environment including a large number of children. *Aubrey v. Sch. Bd. of LaFayette Parish, 148 F.3d 559 (5th Cir. 1998)*

Note: The following testing requirements apply to employees who operate commercial motor vehicles and are subject to commercial driver's license requirements in accordance with federal regulations.

Testing of Drivers

A district shall conduct testing, in accordance with federal regulations, of commercial motor vehicle operators for use of alcohol or a controlled substance that violates law or federal regulation. *49 U.S.C. 31306; 49 C.F.R. Part 382*

Commercial Motor Vehicle Defined

A commercial motor vehicle is defined as a motor vehicle used to transport passengers or property that:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver.

49 C.F.R. 382.107

Testing Procedures

A district shall ensure that all alcohol or controlled substances testing conducted under 49 C.F.R. Part 382 complies with the procedures set forth in 49 C.F.R. Part 40. *49 C.F.R. 382.105*

U.S. Department of Transportation (DOT) tests must be completely separate from non-DOT tests in all respects. DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. *49 C.F.R. 40.13*

Tests Required

Required DOT testing includes:

1. Pre-employment controlled substance tests required under 49 C.F.R. 382.301 [see DBAA];
2. Post-accident alcohol or controlled substance tests required under 49 C.F.R. 382.303;
3. Random alcohol or controlled substances tests required under 49 C.F.R. 382.305;
4. Reasonable suspicion alcohol or controlled substance tests required under 49 C.F.R. 382.307;
5. Return-to-duty alcohol or controlled substances tests required under 49 C.F.R. 382.309; or
6. Follow-up alcohol or controlled substance tests required under 49 C.F.R. 382.311.

No Refusal	No driver shall refuse to submit to a required DOT test. A district shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. *49 C.F.R. 382.211*
Education and Treatment	A district is not required to provide an evaluation by a substance abuse professional or any subsequent recommended education or treatment for an employee who has violated a drug and alcohol regulation of the DOT. However, if a district offers an employee an opportunity to return to a safety-sensitive duty following a violation, the district must, before the employee again performs that duty, ensure that the employee receives an evaluation by a substance abuse professional and that the employee successfully complies with the professional's evaluation recommendations. *49 C.F.R. 40.289*
Return-to-Duty Testing	If a district permits an employee who has violated a DOT drug and alcohol regulation to return to safety-sensitive functions, the district must ensure that the employee takes a return-to-duty test. This test cannot occur until after the substance abuse professional has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties. A district is not required to return an employee to safety-sensitive duties because the employee has met the conditions described in the preceding paragraph. Return-to-duty is a personnel decision that the district has the discretion to make subject to legal requirements. *49 C.F.R. 40.305(a)-(b)*
Educational Materials	A district shall provide educational materials that explain the federal requirements and the district's policies and procedures with respect to meeting the requirements. The district shall ensure that a copy of these materials is distributed to each driver before the start of alcohol and controlled substances testing under 49 C.F.R. Part 382 and to each driver subsequently hired or transferred into a position that requires driving a commercial motor vehicle. Written notice to representatives of employee organizations of the availability of this information shall also be provided. The materials shall include detailed discussion of at least the items listed at 49 C.F.R. 382.601. *49 C.F.R. 382.601*

Reports to DPS

A district required under federal safety regulations to conduct alcohol and drug testing of an employee who holds a commercial driver's license as part of the district's drug testing program shall report to the Department of Public Safety:

1. A valid positive result on an alcohol or drug test performed and whether the specimen producing the result was a dilute specimen, as defined by 49 C.F.R. 40.3;
2. A refusal to provide a specimen for an alcohol or drug test; or
3. An adulterated specimen or substituted specimen, as defined at 49 C.F.R. 40.3, on an alcohol or drug test.

"Employee" includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing.

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

Reasonable Suspicion Searches

The District reserves the right to conduct searches when the District has reasonable suspicion to believe that a search will uncover evidence of work-related misconduct. The District may search the employee, the employee's personal items, work areas, lockers, and private vehicles parked on District premises or worksites or used in District business. Searches that reveal a violation of the District's standards of conduct may result in disciplinary action. [See DH]

Reasonable Suspicion Alcohol and Drug Testing

The District may remove an employee from duty and require testing if there is reasonable suspicion that the employee is under the influence of alcohol or drugs used in violation of District policy. The determination of reasonable suspicion may be based on specific observations of the appearance, behavior, speech, or body odors of the employee whose motor ability, emotional equilibrium, or mental acuity seems to be impaired while on duty or other relevant information. Any employee who is asked to submit to drug or alcohol screening shall be given the opportunity to provide relevant information about prescription or nonprescription medications that may affect the screening.

A District employee who refuses to comply with a directive to submit to testing based upon reasonable suspicion shall be subject to disciplinary action, up to and including termination.

A District employee confirmed to have violated the District's policy pertaining to alcohol or drugs may be subject to disciplinary action. [See DF series and DH]

Employees Covered by the Federal Department of Transportation Rules

In accordance with Department of Transportation (DOT) rules, the District shall establish an alcohol and controlled substances testing program to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by the drivers of commercial motor vehicles, including school buses. The primary purpose of the testing program is to prevent impaired employees from performing safety-sensitive functions.

The Superintendent shall designate a District official who shall be responsible for ensuring that information is disseminated to employees covered under this testing program regarding prohibited driver conduct, alcohol and controlled substances tests, and the consequences that follow positive test results.

Federally Required DOT Testing Program Drug-Related Violations

The following constitute drug-related violations under the DOT rules:

1. Refusing to submit to a required test for alcohol or controlled substances.

2. Providing an adulterated, diluted, or a substituted specimen on an alcohol or controlled substances test.
3. Testing positive for alcohol, at a concentration of 0.04 or above, in a post-accident test.
4. Testing positive for controlled substances in a post-accident test.
5. Testing positive for alcohol, at a concentration of 0.04 or above, in a random test.
6. Testing positive for controlled substances in a random test.
7. Testing positive for alcohol, at a concentration of 0.04 or above, in a reasonable suspicion test.
8. Testing positive for controlled substances in a reasonable suspicion test.

An employee who operates a commercial motor vehicle, including a bus, and commits a drug-related DOT violation as defined above shall not be eligible for reinstatement as a driver.

Alcohol Results Between 0.02 and 0.04

In accordance with DOT rules, a driver tested under this policy and found to have an alcohol concentration of 0.02 or greater, but less than 0.04, shall be suspended from driving duties for at least 24 hours.

[In the event of a positive test result for alcohol of 0.02 or greater, see the disciplinary consequences at District-Imposed Consequences, below.]

Reasonable Suspicion DOT Testing

Only supervisors specifically trained in accordance with federal regulations may, based upon reasonable suspicion, remove a driver from a safety-sensitive position and require testing for alcohol and/or controlled substances. The determination of reasonable suspicion shall be based on specific observations of the appearance, behavior, speech, or body odors of the driver whose motor ability, emotional equilibrium, or mental acuity seems to be impaired. Such observations must take place just preceding, during, or just after the period of the workday that the employee is on duty.

The observations may include indication of the chronic and withdrawal effects of controlled substances. Within 24 hours of the observed behavior, the supervisor shall provide a signed, written record documenting the observations leading to a controlled substance reasonable suspicion test.

District-Defined Violations

An employee violates District policy if the employee tests positive for alcohol at a concentration of 0.02 or greater.

District-Imposed Consequences

In addition to the consequences established by federal law, a District employee confirmed to have violated the District's policy pertaining to alcohol or controlled substances shall be subject to termination of employment. [See DF series]

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

Employees Subject to District Drug and Alcohol Testing

Under its own authority, the District shall apply the DOT testing regulations to the categories of employees listed below:

1. Employees who drive District-owned, -leased, or -rented vehicles; and
2. Employees who perform safety-sensitive functions, including but not limited to, police officers who carry firearms, motor vehicle mechanics and inspectors, transportation aides, and operators of hazardous equipment.
3. Applicants for positions that operate District-owned, -leased, or -rented vehicles or that perform safety-sensitive functions are subject to pre-employment testing.
4. Any employee, when there is reasonable suspicion of use of alcohol or controlled substances in the workplace, is subject to, reasonable suspicion testing.

In addition, the DOT testing regulations shall apply to applicants for positions included in one of the above categories.

EMPLOYEE STANDARDS OF CONDUCT
SEARCHES AND ALCOHOL/DRUG TESTING

DHE1
(REGULATION)

BACKGROUND INFORMATION

1. The primary purpose of the Drug-Free Workplace Program is to provide a safe and legal working environment for the students and employees of the District. See Reference (g). All employees are subject to reasonable suspicion testing. See References (a), (b), (c), (d), and (e). By federal mandate, the District has been training and testing employees since January 1, 1995. See Reference (h). Drug- and alcohol-testing procedures are described in Reference (f).

THREATENING BEHAVIOR

2. If an employee agrees to submit to a drug or alcohol test, but exhibits behavior that is threatening to the supervisor or others, the supervisor should call the District Police Department. The Police Department will provide safe transport to the testing site, if needed, and back to the work site. If testing is to be performed at the workplace location, the District Police Department will remain near the site of testing. The supervisor or his or her designee should ride with the officer and employee to the testing site and back to the work site. Upon the employee's return, or following the on-site testing, the supervisor should offer alternative transportation procedures (taxi, bus, or family member) to get the employee home.

EMPLOYEE OUT OF CONTROL

3. If an employee becomes uncontrollable, the District Police Department should be called for support. Regular police procedures will be implemented, which override the drug-testing program process.

CONSULTATION

4. This regulation has been through consultation (Administrative: November 6, 2007; Instructional: November 1, 2007; Noninstructional: November 13, 2007).

MAINTENANCE RESPONSIBILITY

5. The manager, Employee Support Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DH (LEGAL)

(b) Board Policy DH(LOCAL)

(c) Board Policy DHE(LEGAL)

(d) Board Policy DHE(LOCAL)

(e) Board Policy DI(EXHIBIT)

(f) DHE2(REGULATION)

(g) DH4(REGULATION)

(h) 49 Code of Federal Regulations, Part 40: The Omnibus Transportation Employee Testing Act of 1991

EMPLOYEES SUBJECT TO ALCOHOL AND DRUG TESTING

1. Employees who drive District-owned, -leased, or -rented vehicles, or who perform safety-sensitive functions (including police officers who carry firearms, motor vehicle mechanics and inspectors, transportation aides, operators of hazardous equipment, and custodial and food service staff), and applicants for positions in these categories, are subject to alcohol and other controlled substances testing according to the following guidelines and procedures. [See Reference (g)] In addition, all employees are subject to reasonable suspicion testing. [See REASONABLE SUSPICION TESTING, below and References (a), (b), (c), and (d)]

PRE-EMPLOYMENT AND PRE-ASSIGNMENT TESTING

a. Satisfactory completion of alcohol and drug testing is a pre-employment requirement for each applicant who applies for driving or safety-sensitive positions. The testing for alcohol and drugs must be completed and a negative report for the use of alcohol and drugs must be received before the person may begin to work.

Current employees applying for transfers to driving and safety-sensitive positions must also undergo alcohol and drug testing prior to assuming the duties of the new position.

POST-EMPLOYMENT TESTING

b. Post-employment alcohol and drug testing may be administered for the following reasons:

POST-ACCIDENT TESTING AND UNSAFE PRACTICE TESTING

(1) The District has established Districtwide requirements and guidelines for post-accident testing and unsafe practice testing. In addition, each department that has been assigned one or more District vehicles must establish procedures for post-accident testing and unsafe practice testing:

DISTRICT REQUIREMENTS AND GUIDELINES

(a) Any employee who is involved in an accident while driving a District vehicle, whether on duty or not, will be drug and alcohol tested. An employee assigned to a driving or safety-sensitive position who is involved in an accident while on duty will be prohibited from consuming alcohol for eight hours or until he or she has been tested for alcohol and drug use. The employee will remain readily available for testing or may be deemed to have refused to submit to testing. Any violation of this regulation will result in a declaration of a positive test and termination will follow. Medical attention

is not to be delayed as a result of this procedure.

If the alcohol test is not administered within two hours following the accident, a written record of the reasons for not administering the test within two hours will be prepared and maintained by the supervisor. If the alcohol test is not administered within eight hours after the accident, no further attempts to administer it will be made. A written record of the reasons for not administering the test within eight hours will be prepared by the supervisor and a copy will be sent to Professional Standards for appropriate action.

If the drug test is not administered within 32 hours following the accident, a written record of the reasons for not administering the test will be prepared and maintained by the supervisor.

DEPARTMENTAL PROCEDURES

(b) The following items apply to all accidents involving employees driving District vehicles. This information must be a normal part of the departmental operational procedures for departments with District vehicles, and must be communicated to the employees in those departments:

- An employee involved in an accident while driving a District vehicle, whether on duty or not, must immediately call his or her supervisory chain of command to report the accident;
- No employee involved in an accident while driving a District vehicle may drive a District vehicle again until he or she has been tested for alcohol and drugs and has received a negative report;
- After being notified that an employee has been involved in an accident while driving a District vehicle, the supervisory chain of command must call to advise the drug and alcohol testing company of record of the need for a test and to determine where the employee should be transported for immediate testing;

- The supervisory chain of command must arrange for transportation of the employee to the testing site and for return of the vehicle to the department; and
- The supervisory chain of command must relieve the employee of driving duties until he or she has been cleared by the drug and alcohol test.

RANDOM TESTING

(2) The minimum annual percentage rate for random alcohol testing will be 25 percent of the average number of employees covered under the testing regulation. The minimum annual percentage rate for random testing for controlled substances abuse will be 50 percent of the average number of employees covered under the testing regulation. The percentage rates may change each year as determined by the Federal Highway Administration.

The selection of employees to be randomly tested will be made by a scientifically valid method to ensure that each employee will have an equal chance of being tested each time. The random tests will be unannounced and the dates for administration of the tests will be spread throughout the calendar year.

An employee who is selected for random testing will be required to proceed to the test site immediately upon notification. The employee will be tested for alcohol and other controlled substances before, during, or immediately after performing the functions of the position.

REASONABLE SUSPICION TESTING

(3) A supervisor who determines that reasonable suspicion exists for testing may request a collaborative observation from the substance abuse coordinator or other trained person. When a supervisor orders reasonable suspicion testing, he or she should arrange transportation of the employee to and from the test site and offer alternative transportation (taxi, bus, or family member) to the employee's home. In addition, the supervisor or his or her designee must accompany the employee to and from the test site. If the employee exhibits threatening behavior or becomes uncontrollable, the supervisor should request District police assistance. [See References (b), (c), (d), and (h)]

If the person making the reasonable suspicion assessment determines that there is reasonable suspicion that the employee is under the influence of alcohol and or drugs, then the person making the assessment will communicate the basis of the reasonable suspicion to the employee. If the person making the assessment is not the supervisor, the supervisor should be present at the time the explanation of reasonable suspicion is communicated to the employee. A written notice will be given or sent to the employee explaining the rationale for the reasonable suspicion testing within two business days following the test.

Any supervisor who requests reasonable suspicion testing of an employee who does not test positive must prepare an explanatory rationale for requesting the test(s). This rationale will be transmitted to his or her next line supervisor, who will determine if the requesting supervisor should be required to have additional training or if other appropriate action should be taken.

ALCOHOL

(a) No employee will report to duty while under the influence of or impaired by alcohol, as shown by behavioral, speech, and performance indicators of alcohol misuse, or remain on duty after obtaining a test result showing an alcohol concentration of 0.02 or greater, nor will the District permit the employee to perform or continue to perform the functions of his or her position.

An employee will be required to undergo alcohol testing at any time the District has reasonable suspicion to believe that the employee has violated the policy for a drug-free workplace. [See References (a), (b), (c), (d), and (f)] The District's determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The observations must be made by a supervisor trained under Reference (k). The supervisor who makes the determination that reasonable suspicion exists will not administer the test.

Alcohol testing is authorized only if the observations are made just preceding, during, or just after the period of the workday that the employee is required to be in compliance with the policy (including attendance at school functions). [See References (a), (b) (c), and (d)] If the alcohol test is not administered within two hours following the determination, a written record of the reasons for not administering the test within two hours will be prepared by the supervisor and a copy sent to Professional Standards for appropriate action. If the alcohol test is not administered within eight hours after the determination, no further attempts to administer it will be made. A written record of the reasons for not administering the test within eight hours will be prepared by the supervisor and a copy sent to Professional Standards for appropriate action.

OTHER CONTROLLED SUBSTANCES

(b) No employee will report to duty while under the influence of or impaired by a controlled substance other than alcohol, as shown by behavioral, speech, and performance indicators of controlled substance use, or remain on duty after obtaining a positive test result, nor will the District permit the employee to perform or continue to perform the functions of his or her position.

An employee will be required to undergo controlled substance testing at any time the District has reasonable suspicion to believe that the employee has violated the policy for a drug-free workplace. [See References (a), (b), (c), (d), and (e)] The District's determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances. The observation must be made by a supervisor trained under References (i) and (j).

A written record will be made of the observations leading to a controlled substance reasonable suspicion test and signed by the su-

pervisor who made the observations within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

RETURN-TO-DUTY TESTING

(4) Any employee who has been off duty as a result of a recommendation for termination for violation of References (a), (b), (c), (d) or (e) that was not upheld; or as a result of a self-referral for alcohol or drug abuse [see SELF-REFERRALS FOR ALCOHOL AND DRUG ABUSE and FINDING OF DRUG/ALCOHOL USE AND DISCIPLINARY ACTION below], will be required to take a return-to-duty test for alcohol or other controlled substances or both. Acceptable results of the test(s) must be reported before the employee may resume performance of the duties of his or her position.

FOLLOW-UP TESTING

(5) An employee who has been determined to be in need of assistance in resolving problems associated with alcohol misuse, use of other controlled substances, or both is subject to unannounced follow-up testing as directed by a Substance Abuse Professional (SAP). Such testing will consist of at least six tests in the first 12 months of the employee's return to duty. The SAP may terminate the follow-up testing at any time after the first six tests have been administered.

Follow-up alcohol testing will be conducted only just before, during, or just after the employee's performance of the functions of his or her position.

SUBSTANCE USE AND ABUSE TESTING PROCEDURE

2. Substance use and abuse testing will consist of urine testing for five illegal substances as defined by the National Institute on Drug Abuse (NIDA). These illegal substances include marijuana, cocaine, amphetamines, opiates, and phencyclidine (PCP).

Two tests, an initial test and a confirmatory test, will be administered. The test results must equal or surpass detection levels set by NIDA to be considered positive. Both tests, the initial and confirmatory, must be positive or they will be considered inconclusive and the results will be reported as negative.

Collection of urine specimens will follow the protocol established by the United States Department of Transportation. Split sampling is required. A split sample is defined as a spe-

cimen of which a portion is retained and sealed separately so that, in the event a confirmation test is positive, the retained portion may be assayed by an independent confirmation test at a second laboratory.

A licensed physician with knowledge of substance abuse disorders and training in interpretation and evaluation of positive and suspicious negative drug test results will be employed as the District medical review officer (MRO). The MRO will review and interpret positive drug test results and determine if an alternative medical explanation for the positive results is possible. The review and determination may include a medical interview with the employee, a review of the employee's medical history, a review of any other biomedical factors, or all of the preceding information sources.

Responsibilities of the MRO also include:

- Receiving the test results from the laboratory;
- Notifying the employee of a confirmed positive test result;
- Verifying the laboratory results;
- Notifying the employee of a verified positive test result;
- Making return-to-duty or approval-to-hire decisions; and
- Ensuring return-to-duty or approval-to-hire decision requirements are met.

ALCOHOL TESTING PROCEDURE

3. Two tests, an initial test and a confirmatory test, will be administered. The test results must equal or surpass the detection level of 0.02 to be considered positive. Alcohol testing will be performed with an evidential breath testing machine (EBT) for both the initial and confirmatory tests. Alcohol confirmatory tests will be conducted within 15–30 minutes of the initial test.

   The EBT tests will be administered by a trained breath alcohol technician. The employee's direct supervisor will not administer the tests.

   An employee will be deemed to have tested positive for alcohol use in violation of References (a), (b), (c), and (d) if an alcohol test shows an alcohol concentration of 0.02 or higher.

POSITIVE TEST RESULTS

4. Employees who test positive for drug or alcohol use or both will be immediately prohibited from performing job functions and will be recommended for termination.

EMPLOYEE REFUSAL TO TEST

5. Refusal to submit to an alcohol or drug test is interpreted as a positive test. [See References (c) and (d)] Any employee who refuses to submit to an alcohol or drug test will be immediately prohibited from performing job functions and will be recommended for termination. Likewise, an employee who does not produce an adequate sample (urine or breath) without a valid medical reason or who engages in conduct that obstructs the collection process will be immediately prohibited from performing job functions and will be recommended for termination. Additionally, an employee who leaves the scene of an accident without a valid reason will be immediately prohibited from performing job functions and will be recommended for termination.

EMPLOYEE REFERRAL TO A SAP

6. The District Drug-Free Workplace Program (DFWP) will refer employees who test positive or who refuse to submit to an alcohol or drug test to a SAP for evaluation. The SAP is defined as:

- A licensed physician (with a Medical Doctor or Doctor of Osteopathy degree) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders;
- A licensed or certified psychologist;
- A licensed social worker;
- A licensed or certified employee assistance professional with knowledge of and clinical experience in alcohol- and drug-related disorders; or
- A licensed drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC) or the National Board for Certified Counselors, Inc. (NBCC).

All of the previously listed or mentioned professionals must have met requirements of 49 CFR-Part 40.281(c)(1) qualification training and 40.281(c)(2), valid exam as recognized by the U.S. Department of Transportation. [See Reference (j)]

The referral process will include notice to employees who test positive of local treatment resources, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. Counseling and rehabilitation costs are the responsibility of the employee.

SELF-REFERRALS FOR ALCOHOL AND DRUG ABUSE

7. Employees who recognize and admit to alcohol or drug abuse may refer themselves to the DFWP. Employees in safety-sensitive or security-related positions will not be permitted to continue in those assignments.

   Employees may use accumulated personal leave time while in counseling and rehabilitation under a plan approved by the DFWP. Counseling and rehabilitation costs are the responsibility of the employee.

   An employee who voluntarily admits to alcohol or illegal drug use, commences counseling or rehabilitation prior to an event that leads to the initiation of any alcohol or drug testing, and thereafter refrains from using alcohol and/or illegal drugs, may not be subject to disciplinary action for violation of References (a), (b), (c), (d) and (e).

CONFIDENTIALITY OF RECORDS

8. The alcohol and drug testing results will be maintained in a confidential file. Information from the file will not be available to anyone except the custodian of the personnel records, authorities from Health and Medical Services and the EAP, and others as required by Board policy or law. [See Reference (e)] Supervisors may be told the results of a test (positive or negative) but will not be told what substances tested positive. An employee may request to view his or her personal record in accordance with Reference (f).

DRIVING WHILE INTOXICATED CONVICTION

9. Any District employee who receives a Driving While Intoxicated (DWI) conviction or who pleads guilty or nolo contendere to a DWI charge and receives deferred adjudication must report the conviction or plea to his or her supervisor within five days, regardless of whether the incident occurred in a District vehicle or a personal vehicle. [See References (a), (b), (c), and (d)] A school bus driver who is convicted of any DWI offense, whether driving a District vehicle or a personal vehicle, will be terminated. Additionally, a school bus driver convicted of any DWI offense will not be eligible for employment in any position with the District for at least one year following the termination and will never be eligible for a driving position with the District. Any other District employee who is convicted of a DWI offense will be terminated if the offense was committed while driving a District vehicle or will be subjected to disciplinary action up to and including termination if the offense was committed while driving a personal vehicle. [See References (a), (b), (c), (d), and (g)]

FINDING OF DRUG OR ALCOHOL USE AND DISCIPLINARY ACTION

10. An employee who is found to be in violation of the District's Drug-Free Workplace Program as set forth in References (a), (b), (c), (d), (e), (f) and (i) will be recommended for termination except when the employee voluntarily admits to alcohol or illegal drug use and commences counseling or rehabilitation prior to an event that leads to the initiation of any alcohol or drug testing; such employee must thereafter refrain from using alcohol and/or illegal drugs.

CONSULTATION

11. This regulation has been through consultation (Administrative: June 7, 2011; Instructional: June 2, 2011).

MAINTENANCE RESPONSIBILITY

12. The manager, Employee Support Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DH(LEGAL)

(b) Board Policy DH(LOCAL)

(c) Board Policy DHE(LEGAL)

(d) Board Policy DHE(LOCAL)

(e) DI(EXHIBIT)

(f) Board Policy GBA(LEGAL)

(g) CNB3(REGULATION)

(h) DHE1(REGULATION)

(i) DH2(REGULATION)

(j) 49 Code of Federal Regulations 40.281(a)-(c) Procedures for Transportation Workplace and Drug and Alcohol Testing Program.

POSTACCIDENT TESTING

This table depicts the circumstances under which an employer is required to perform a postaccident alcohol or controlled substances test, in accordance with 49 CFR 382.303(a).

Types of accidents involved	Citation issued to the CMV driver	Test must be performed by the employer
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

Reporting Workplace Violence

A district shall post a notice to employees of the contact information for reporting instances of workplace violence or suspicious activity to the Department of Public Safety (DPS). The notice must be posted in a conspicuous place, in sufficient locations to be convenient to all employees, and in English and Spanish, as appropriate.

A notice complies with Labor Code Chapter 104A, if, at a minimum, the information contained in the graphic at 40 Administrative Code 800.600(d) is conveyed:

The Texas Workforce Commission will make an electronic copy of the Reporting Workplace Violence poster[1] available on its website, which will be free of charge and allow employers to print a copy of the poster.

40 TAC 800.600(b)(2), (c)-(e); Labor Code 104A.002, .003

Hazard Communication Act

A district shall perform the following duties in compliance with the Hazard Communication Act:

Notice

A district shall post and maintain adequate notice, at locations where notices are normally posted, informing employees of their rights under the Hazard Communication Act. *Health and Safety Code 502.017(a)*

Education and Training

A district shall provide an education and training program for employees who use or handle hazardous chemicals. “Employee” means a person who may be or may have been exposed to hazardous chemicals in the person’s workplace under normal operating conditions or foreseeable emergencies. Workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances are not employees for purposes of these requirements. *Health and Safety Code 502.003(10), .009(a)*

A district shall keep the written hazard communication program and a record of each training session given to employees, including the date, a roster of the employees who attended, the subjects covered in the training session, and the names of the instructors. Records shall be maintained for at least five years. *Health and Safety Code 502.009(g)*

Workplace Chemical List

A district shall compile and maintain a workplace chemical list that contains required information for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds, or as determined by the executive commissioner of the Health and Human Services Commission for certain highly toxic or dangerous hazardous chemicals. The list must be readily available to employees and their representatives. All employees shall be made aware of the list before working with or in a

work area containing hazardous chemicals. *Health and Safety Code 502.005(a), (c)*

The district shall update the list as necessary but at least by December 31 of each year, and shall maintain the list for at least 30 years. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information. *Health and Safety Code 502.005(b), (d)*

Safety Data Sheets — A district shall maintain a legible copy of a current manufacturer's safety data sheets (SDS) for each hazardous chemical. If the district does not have a current SDS for a hazardous chemical when the chemical is received, the district shall request an SDS in writing from the manufacturer or distributor in a timely manner or otherwise obtain a current SDS. Safety data sheets shall be readily available, on request, for review by employees or designated representatives at each workplace. *Health and Safety Code 502.006*

Protective Equipment — Employees shall be provided with appropriate personal protective equipment. *Health and Safety Code 502.017(b)*

Labeling — A label on an existing container of a hazardous chemical may not be removed or defaced unless it is illegible, inaccurate, or does not conform to the OSHA standard or other applicable labeling requirement. Primary and secondary containers must be relabeled in accordance with Health and Safety Code 502.007(a). An employee may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use of the employee who performs the transfer. *Health and Safety Code 502.007*

Pest Control Treatment Notice — The chief administrator or building manager shall notify persons who work in a district building of an indoor pest control treatment by:

1. Posting the sign made available by the certified applicator or technician in an area of common access that the persons are likely to check on a regular basis at least 48 hours before each planned treatment; and
2. Providing the pest control information sheet made available by the certified applicator or technician to a person working in the building on request.

Occupations Code 1951.455; 4 TAC 7.146, .147 [See CLB]

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[1] Reporting Workplace Violence poster: https://www.twc.texas.gov/sites/default/files/fdcm/docs/workplace-violence-poster-twc.pdf

Values and Expectations

The District recognizes that promoting a safe and positive work environment contributes to the fulfillment of the District's mission and provides for the intellectual, social, emotional, and physical growth of students.

An employee can expect:

1. A supervisor who follows District policy in relation to wages, hours, and conditions of work;
2. A procedure for resolving employment disputes;
3. Respect from colleagues and supervisors;
4. A safe and healthy work environment;
5. Assistance, as needed, from the Employee Assistance Program; and
6. Training or staff development to be available.

Protection from Physical Assaults

The District shall take reasonable steps to provide a safe environment for its students and employees. An employee may use reasonable force as is necessary to protect himself or herself from an attack, to protect another person or property, to quell a disturbance threatening physical injury to others, or to obtain possession of weapons or other dangerous objects upon the aggressor or within control of a student or other person. [See also DEC(LEGAL) on Assault Leave]

Effective Date

This policy shall be effective as of the adoption date, October 15, 2021.

FAIR PRACTICES

1. All District disciplinary actions will be handled in accordance with established policies and procedures. It is imperative that all supervisors address necessary disciplinary actions in a manner that is consistent with the District's Core Value of Common Decency. It is the position of the Houston Independent School District that no supervisor will discipline or reprimand an employee in a public setting or in a manner otherwise intending to cause an employee public embarrassment or ridicule.

CONSULTATION

2. This regulation has been through consultation (Administrative: September 8, 2004; Instructional: September 2, 2004; Noninstructional: October 12, 2004).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCE:

(a) Board Policy DI(LOCAL)

Note: This policy addresses complaints of discrimination, harassment, and retaliation of employees based on a protected characteristic identified in DAA(LEGAL).

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

Grievance Procedures

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

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

Title IX — A district that receives federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. *34 C.F.R. 106.8(c); North Haven Board of Education v. Bell, 456 U.S. 512 (1982)* [For legally referenced material relating to Title IX grievance procedures, see FFH(LEGAL).]

Compliance Coordinators

Section 504 — A district that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with Section 504 of the Rehabilitation Act. The district's Section 504 notification [see DAA] shall also identify the responsible employee so designated. *34 C.F.R. 104.7(a), .8(a)*

ADA — A district that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA, including any investigation of any complaint communicated to it alleging its noncompliance with the ADA or alleging any actions that would be prohibited by the ADA. The district shall make available to all interested individuals the name, office address, and telephone number of the employee or employees so designated. *28 C.F.R. 35.107(a)*

ADEA — A district shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Age Discrimination in Employment Act (ADEA), including investigation of any complaints that the district receives alleging any actions that are prohibited by the ADEA. A district shall notify its employees of

	the identity of the responsible employee by name or title, address, and telephone number. *34 C.F.R. 110.25(a), (b)*
Title IX	A district must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX, which employee must be referred to as the "Title IX Coordinator." The district must notify applicants for admission and employment, students, parents or legal guardians, employees, and all professional organizations holding professional agreements with the district of the name or title, office address, electronic mail address, and telephone number of the employee(s) so designated. *34 C.F.R. 106.8(a)*

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

Definitions

Solely for purposes of this policy, the term "employee" includes current employees, former employees, applicants for employment, and unpaid interns.

Statement of Nondiscrimination

The District prohibits discrimination, including harassment, against any employee on the basis of race, color, religion, sex, national origin, age, disability, ancestry, marital status, veteran status, political affiliation, sexual orientation, gender identity, and/or gender expression, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of District policy and is prohibited.

Discrimination

Discrimination against an employee is defined as conduct directed at an employee on the basis of race, color, religion, sex, national origin, age, disability, ancestry, marital status, veteran status, political affiliation, sexual orientation, gender identity, and/or gender expression, or any other basis prohibited by law that adversely affects the employee's employment.

In accordance with law, discrimination on the basis of sex includes discrimination on the basis of biological sex, gender identity, sexual orientation, gender stereotypes, or any other prohibited basis related to sex.

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.

Prohibited conduct also includes sexual harassment as defined by Title IX. [See FFH(LEGAL)]

Prohibited Harassment

Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee's race, color, religion, sex, national origin, age, disability, ancestry, marital status, veteran status, political affiliation, sexual orientation, gender identity, and/or gender expression, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee's work performance;

2. Creates an intimidating, threatening, hostile, or offensive work environment; or

3. Otherwise adversely affects the employee's performance, environment, or employment opportunities.

Examples

Examples of prohibited harassment may include offensive or derogatory language directed at another person's religious beliefs or practices, accent, skin color, gender identity, or need for workplace accommodation; threatening or intimidating conduct; offensive jokes, name calling, slurs, or rumors; cyberharassment; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.

Sex-Based Harassment

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

Sexual Harassment

Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. Submission to the conduct is either explicitly or implicitly a condition of an employee's employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or

2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.

Examples

Examples of sexual harassment may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; and other sexually motivated conduct, contact, or communication, including electronic communication.

Workplace Bullying

The District considers workplace bullying to be unacceptable and shall not tolerate it under any circumstances.

Workplace bullying is defined as engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs in the workplace that:

1. Has the effect or will have the effect of physically harming another employee, damaging the employee's property, or placing the employee in reasonable fear of harm to the employee's person or of damage to the employee's property;
2. Is so sufficiently severe, persistent, and pervasive that the action or threat creates an intimidating, threatening, or abusive work environment for the employee;
3. Exploits an imbalance of power between the employee perpetrator and the employee victim through written or verbal expression or physical conduct; or
4. Interferes with the victim's employment or substantially disrupts the operation of the work location.

Workplace bullying does not include the legitimate exercise of employee management, including task assignment, employee coaching, and work-related employee discipline.

Allegations of workplace bullying shall be handled in accordance with DIA3(REGULATION).

Reporting Procedures

Any employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should immediately report the alleged acts. The employee may report the alleged acts to his or her supervisor or campus principal.

Alternatively, the employee may report the alleged acts to one of the District officials below.

Definition of District Officials

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

Title IX Coordinator

Reports of discrimination based on sex, including sexual harassment, may be directed to the designated Title IX coordinator. [See DIA(EXHIBIT)]

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 nondiscrimination laws.

Alternative Reporting Procedures

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

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

To ensure the District's prompt investigation, reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act.

Notice of Report

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

Any District employee who receives a report of prohibited conduct based on sex, including sexual harassment, shall immediately notify the Title IX coordinator.

Investigation of Reports Other Than Title IX

The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX, see the procedures below at Response to Sexual Harassment—Title IX.

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

Initial Assessment

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

Interim Action

If appropriate, the District shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.

District Investigation

The investigation may be conducted by the District official or a designee, such as the campus principal, or by a third party designated by the District, such as an attorney. When appropriate, the principal or supervisor shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

Concluding the Investigation

Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation.

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

District Action

If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.

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

Confidentiality

To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

Appeal

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

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

Response to Sexual Harassment—Title IX

For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).

General Response

When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:

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

The District's response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal

complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.

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

Title IX Formal Complaint Process

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

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

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. A requirement that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias;
4. A presumption that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law;
6. A description of the possible disciplinary sanctions and remedies that may be implemented following a determination of responsibility for the alleged sexual harassment;
7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment;
8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegations therein;

9. A description of the supportive measures available to the complainant and respondent;

10. A prohibition on using or seeking information protected under a legally recognized privilege unless the individual holding the privilege has waived the privilege;

11. Additional formal complaint procedures in 34 C.F.R. 106.45(b), including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures; and

12. Other local procedures as determined by the Superintendent.

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

Retaliation — The District prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or otherwise participates or refuses to participate in an investigation.

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

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

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

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

Effective Date — This policy shall be effective as of the adoption date, August 14, 2020.

GENERAL GUIDELINES

1. The District adheres to a policy of nondiscrimination in employment, training, promotion, and program accessibility for all staff members and students in accordance with all applicable state and federal regulations. See References (a), (b), (f), (g), (h), (i), and (j).

IMPLEMENTATION

a. All District personnel are responsible for implementation of the Equal Employment Opportunity (EEO) policy throughout the District. See References (a) and (b). The EEO office, Human Resources, is responsible to the Superintendent for ensuring that the District adheres to this policy, and is responsible for implementation of appropriate monitoring systems, data collection and analysis, and other necessary oversight.

AMERICANS WITH DISABILITIES ACT COMPLIANCE

b. The District, in compliance with Reference (f), designates the manager, EEO, as the person to coordinate the District's efforts to comply with and carry out the District's responsibilities under the Americans with Disabilities Act (ADA). The office address and telephone number of the manager, EEO, must be published in the District's directory and also be prominently posted throughout the Hattie Mae White Educational Support Center in workrooms, kitchens, and Human Resources reception areas.

COMPLAINTS

c. Complaint procedures to assure compliance with federal and state laws and References (a) and (b) have been established. See COMPLAINTS ON CLAIMS OF DISCRIMINATION.

RETALIATION

d. Retaliation against employees or students who file discrimination complaints or who assist the District in an investigation of a discrimination complaint is strictly prohibited. Acts of retaliation will result in disciplinary action that may include termination.

BIENNIAL REPORT

e. The EEO office files the biennial EEO-5 report as required.

IMPLEMENTATION PROCEDURES

2. Implementation procedures for References (a) and (b) are as follows:

RECRUITMENT

a. The District solicits applications for employment from all types of schools, colleges, and employment agencies so that persons of both sexes and varied ethnic backgrounds may have equal opportunity to work for the District. Recruitment is conducted so as to ensure that every interested and qualified person may be aware of

vacancies and receive proper consideration for such positions upon application.

ADMINISTRATOR AND SUPERVISOR TRAINING

b. The executive general manager, Human Resources, provides a training program to ensure that all administrative and supervisory personnel understand the policy and the plan for its implementation. This training program is repeated periodically to ensure proper orientation of newly assigned people.

INTERVIEWER AND RECEPTIONIST TRAINING

c. First contact interviewers, receptionists, and recruiters must be made aware of the nondiscrimination policy and instructed on how to conduct interviews without regard for race, creed, color, sex, religion, marital status, national origin, or physical disability. See References (c) and (d).

APPLICATIONS

d. Application forms are reviewed periodically to ensure that the form is free of questions and requests for information that may be discriminatory.

DEPARTMENTAL RESPONSIBILITIES

e. Department heads are responsible for implementation of the nondiscrimination policy within their departments and for assisting Human Resources in the recruitment and selection process so as to ensure equal opportunities for all personnel.

EVALUATION

f. Human Resources evaluates the requirements of applicable federal rules, regulations, and guidelines related to equal employment opportunity.

COMPLAINTS OR CLAIMS OF DISCRIMINATION

3. Guidelines and procedures for complaints or claims of discrimination are as follows.

GUIDELINES

a. The following guidelines apply to the discrimination complaint process:

- Individuals who believe they have been subjected to illegal discrimination are encouraged to make their complaints immediately following an alleged act of discrimination;
- District employees are obligated to perform their duties as directed while complaints are pending resolution;
- If an individual believes that he or she is being retaliated against for having initiated a complaint, he or she should immediately report the alleged acts of retaliation to EEO;

- It is incumbent upon employees to maintain an appropriate working environment free of intimidation or retaliation both during an investigation and upon resolution of a complaint. No one will interfere with an investigation by intimidating witnesses or withholding information. Participants in an investigation will not discuss facts or circumstances of the complaint to the extent that it interferes with the investigation;
- Employees must be aware that intentionally filing false accusations of discrimination will result in disciplinary action; and
- Employees who are aware of discrimination against other employees are encouraged to report the discriminatory acts.

See Reference (d).

REPORTING PROCEDURES

b. An individual who believes he or she is the subject of illegal discrimination is encouraged to report the alleged discrimination immediately. The individual has the choice of reporting the alleged discriminatory acts, other than complaints of ADA noncompliance, to any of the following:

- His or her immediate supervisor;
- The school principal or work location supervisor;
- The appropriate assistant superintendent or department head; or
- The EEO office.

See References (d) and (k).

Complaints regarding allegations of noncompliance with the ADA will be directed to the manager, EEO, who will investigate the complaint. See Reference (e).

RESPONDING TO A CLAIM OF DISCRIMINATION

c. The response, in some cases, will involve a complete investigation with witness interviews and disciplinary action. In other circumstances, the response could only involve discussions with the individual making the claim and the individual who allegedly committed the act of discrimination. The scope of the response will be determined by the nature of the allegations and the amount of information necessary to review the allegations. See Reference (l). Any disciplinary action against an em-

ployee due to acts of discrimination will be recommended and implemented in accordance with References (a), (b), and (c).

COMPLAINT RECIPIENT'S RESPONSIBILITIES

(1) Every administrator or supervisor who receives a complaint of discrimination must respond and initiate action. In every event of a complaint of discrimination, the individual receiving the complaint will complete the EEO Complaint Form and submit copies to EEO. See Reference (k).

INVESTIGATOR'S RESPONSIBILITIES

(2) The following steps will be taken with every investigation and response:

- The investigator will obtain as much information as possible from the individual making the complaint, including dates, times, and locations of the alleged acts of discrimination, names of any witnesses, and physical and documentary evidence;
- The investigator will begin an investigation within five working days of receiving the information from the individual making the complaint;
- An investigation should include a discussion with the individual who allegedly committed the alleged discrimination to explain the specific allegations and to offer an opportunity for a response;
- Upon completion of the investigation, the individual making the complaint should be informed about the resolution of the complaint;
- Upon completion of the investigation, the individual who allegedly committed the discriminatory act should be informed of the resolution of the complaint. The individual may be accompanied by a representative of his or her choice to discuss the resolution of the complaint; and
- Upon completion of the investigation, the EEO Complaint Response Form, documentation of the steps taken to investigate the complaint and the proposed resolution must be sent to EEO. See References (k) and (l).

CONSULTATION

4. This regulation has been through consultation (Administrative: November 6, 2007; Instructional: November 1, 2007; Noninstructional: November 13, 2007).

MAINTENANCE RESPONSIBILITY

5. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DAA(LEGAL)

(b) Board Policy DAA(LOCAL)

(c) Board Policy DH(LOCAL)

(d) Board Policy DIA(LOCAL)

(e) DAA2(REGULATION)

(f) Americans with Disabilities Act of 1990, Section 35.107

(g) Civil Rights Act of 1964, Title VII (as amended)

(h) Civil Rights Act of 1991

(i) Education Amendments of 1972, Title IX (as amended)

(j) Rehabilitation Act of 1973, Section 504

(k) Form – EEO Complaint Form

(l) Form – EEO Complaint Response Form

GUIDELINES

1. The Houston Independent School District adheres to a policy that prohibits sexual harassment. These procedures are intended to ensure compliance with References (k) and (l), and applicable federal and state statutes. See References (p) and (q). Sexual harassment of students is addressed in Reference (o). The following guidelines apply to employee complaints or claims of sexual harassment:

   - Individuals who believe they have been sexually harassed are encouraged to make their complaints immediately following an alleged act of sexual harassment;
   - District employees are obligated to perform their duties as directed while complaints are pending resolution;
   - If an individual believes that he or she is being retaliated against for having initiated a complaint, he or she should immediately report the alleged acts of retaliation to the Equal Employment Opportunity (EEO) office;
   - All employees must maintain a working environment free of intimidation or retaliation both during an investigation and upon resolution of a complaint. No one will interfere with an investigation by intimidating witnesses or withholding information. The accused employee will be subject to reassignment pending the completion of an investigation if his or her immediate supervisor, department head, principal, regional superintendent, or assistant superintendent determines that the reassignment is appropriate to prevent further harassment, retaliation, or interference with the investigation. Participants in an investigation will not discuss facts or circumstances of the complaint to the extent that it interferes with the investigation;
   - Employees must be aware that intentionally filing false accusations of sexual harassment will result in disciplinary action;
   - Employees who are aware of sexual harassment of other employees are encouraged to report the acts of sexual harassment;
   - To the extent possible, every effort will be made to maintain confidentiality during an investigation; and
   - Employees who are aware of sexual harassment of students are required to report the acts of sexual harassment. See References (m) and (r).

REPORTING PROCEDURE

2. An individual who believes he or she has been is the subject of sexual harassment will be encouraged to report the alleged sexual harassment immediately. The individual has the choice of reporting the alleged sexual harassment to any of the following:

- His or her immediate supervisor;
- The school principal or work location supervisor;
- The appropriate assistant superintendent or department head; or
- The EEO office.

RESPONDING TO A CLAIM OF SEXUAL HARASSMENT

3. The response in some cases will involve a complete investigation with witness interviews and disciplinary action. In other circumstances, the response may only involve discussions with the individual making the claim and subsequent discussions with the individual who allegedly committed the sexual harassment. The scope of the response will be determined by the nature of the allegations and the amount of information necessary to review the allegations. Any disciplinary action against an employee due to acts of sexual harassment will be recommended and implemented in accordance with References (a), (b), (c), (d), (e) (f), (g), (h) (i), (j), (k), and (n).

COMPLAINT RECIPIENT'S RESPONSIBILITIES

a. Every administrator or supervisor who receives a complaint of sexual harassment must respond and initiate action. In every event of a complaint of sexual harassment, the individual receiving the complaint will complete the Complaint Form and submit copies to EEO. See Reference (s).

INVESTIGATOR'S RESPONSIBILITIES

b. The following steps will be taken with every investigation and response:

- The investigator will obtain as much information as possible from the individual making the complaint, including dates, times, and locations of the alleged acts of sexual harassment, names of any witnesses, and physical and documentary evidence;
- The investigator will begin an investigation within five working days of receiving the information from the individual making the complaint;
- An investigation will include a discussion with the individual who allegedly committed the sexual ha-

rassment to explain the specific allegations and to offer an opportunity for a response;

- Upon completion of the investigation, the individual making the complaint will be informed about the resolution of the complaint;
- Upon completion of the investigation, the individual who allegedly committed the acts of sexual harassment will be informed of the resolution of the complaint. The individual may be accompanied by a representative of his or her choice to discuss the resolution of the complaint; and
- Upon completion of the investigation, the Response Form, documentation of the complaint and the steps taken to investigate it, and the proposed resolution must be sent to EEO. See Reference (t).

CONSULTATION

4. This regulation has been through consultation (Administrative: December 6, 2005; Instructional: January 5, 2006; Noninstructional: January 10, 2006).

MAINTENANCE RESPONSIBILITY

5. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DFAA(LEGAL)

(b) Board Policy DFAA(LOCAL)

(c) Board Policy DFAC(LEGAL)

(d) Board Policy DFBA(LEGAL)

(e) Board Policy DFBA(LOCAL)

(f) Board Policy DFBB(LEGAL)

(g) Board Policy DFBB(LOCAL)

(h) Board Policy DFCA(LEGAL)

(i) Board Policy DFCA(LOCAL)

(j) Board Policy DGBA(LEGAL)

(k) Board Policy DOA(LEGAL)

(l) Board Policy DOA(LOCAL)

(m) Board Policy FFH(LOCAL)

(n) DCD1(REGULATION)

(o) FFH(REGULATION)

(p) Civil Rights Act of 1964, Title VII (as amended)

(q) Civil Rights Act of 1991

(r) Texas Family Code, Section 152.377, Chapter 261.101

(s) Form – Houston Independent School District Sexual Harassment Complaint Form

(t) Form – Houston Independent School District EEO Complaint Response Form

Reports of workplace bullying will be made immediately following an alleged act of workplace bullying. A failure to immediately report may impair the District's ability to investigate and address the prohibited conduct.

District employees are obligated to perform their duties as directed while complaints are pending resolution.

REPORTING PROCEDURES

Reporting procedures will be as follows:

1. Any employee who believes that he or she, or another employee, is the subject of workplace bullying is encouraged to report the alleged bullying immediately. The individual may report the alleged acts to any of the following persons:

   - His or her immediate supervisor;
   - The school principal or work location supervisor; or
   - The appropriate department chief.

   If the school principal or immediate supervisor is the subject of a workplace bullying complaint, the employee may report the complaint directly to the appropriate next line supervisor or department chief.

   REPORT FORMAT

   a. The employee may file a complaint orally or in writing by completing the Employee Complaint form. If the report is made orally, the supervisor, as noted at REPORTING PROCEDURES, above, will document the allegations in writing and record the date and circumstances of the interview. The employee may request a complaint form from the Employee Relations department.

   NOTICE TO EMPLOYEE RELATIONS

   b. Upon receiving a report of workplace bullying, the supervisor who received the complaint will provide a copy of the complaint form to Employee Relations in Human Resources within 48 hours of receiving the complaint.

FALSE CLAIM

2. A report of workplace bullying must be made in good faith. An employee who intentionally makes a false claim, offers false statements, or refuses to cooperate with a District investigation regarding workplace bullying will be subject to appropriate disciplinary action.

INVESTIGATIVE PROCEDURES

3. The supervisor or department chief to whom the report of alleged workplace bullying is made will conduct an investigation based on the allegations in the report and, if appropriate, will promptly take interim action calculated to prevent workplace bullying during the course of the investigation. The investiga-

tion must begin within five working days of receiving the employee complaint.

CONFIDENTIALITY

a. To the extent possible, every effort will be made to maintain confidentiality during an investigation.

INTERVIEWS

b. The investigator will interview the complainant, or the alleged victim, if that person is not also the complainant, the alleged bully ("respondent"), and witnesses, if any.

SUPPORTING DOCUMENTATION

c. Complainants and respondents are allowed to submit supporting documentation as appropriate.

INVESTIGATION TIME LINE

d. The investigation will be completed within 30 District calendar days from the date that the complaint report of alleged bullying is made.

INVESTIGATIVE REPORT

e. The investigator will prepare a written report of the investigation. The report will include a description of the alleged conduct, the evidence reviewed and considered, and a determination of whether bullying occurred. The investigator will forward a copy of the final Investigation Report and any appropriate materials to Employee Relations and the chief of the department in which the accused employee works within ten District calendar days of completion of the investigation.

DISCIPLINARY ACTION

f. If the investigation confirms the allegation of workplace bullying as defined in References (e) and (f), the chief of the department in which the accused employee works will take appropriate action to prevent further bullying and to address the actions of the accused employee, which may include disciplinary actions up to and including termination. [See References (a), (b), (c) and (d)]

APPEAL

4. An employee who alleges he or she has experienced workplace bullying and who is dissatisfied with the outcome of the investigation may file a grievance in accordance with DGBA (LOCAL) starting at Level II.

CONSULTATION

5. This regulation has been through consultation (Administrative: November 11, 2014, Instructional: November 6, 2014, Non-instructional: November 11, 2014.)

MAINTENANCE RESPONSIBILITY

6. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

EFFECTIVE DATE

7. This regulation will be effective as of the approval date, December 15, 2014.

REFERENCES:

(a) Board Policy DCD(LOCAL)

(b) Board Policy DFAA(LEGAL)

(c) Board Policy DFAA(LOCAL)

(d) Board Policy DFAC(LEGAL)

(e) Board Policy DH(LOCAL)

(f) Board Policy DIA(LOCAL)

Title IX Coordinator

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

Name: Casteadel Webb Jr.

Position: Title IX Coordinator

Address: 4400 W. 18th St., Houston, TX 77092

Email: Title IX coordinator (TitleIXComplaints@houstonisd.org)

Telephone: (713) 556-7333

ADA/Section 504 Coordinator

The District designates and authorizes the following person as the ADA/Section 504 coordinator to be responsible for coordinating the District's efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, for employees:

Name: Sabrina Ikhimokpa

Position: Director, Leave Administration

Address: 4400 W. 18th St., Houston, TX 77092

Email: ADA/Section 504 coordinator (ADA@houstonisd.org)

Telephone: (713) 556-6590

Note: The board has adopted an innovation plan that affects application of provisions in this legally referenced policy. [See AF(LOCAL)]

Credentials or Permit Required

A public school employee must have the appropriate credentials for his or her current assignment specified in 19 Administrative Code Chapter 231, Requirements for Public School Personnel Assignments, unless the appropriate permit has been issued under Chapter 230, Subchapter F, Permits. *19 TAC 231.1(a)* [See DBA]

Principal's Approval

The principal of a campus shall approve all teacher and staff appointments for the campus from a pool of applicants selected by a district or of applicants who meet the hiring requirements established by a district, based on criteria developed by the principal after informal consultation with the faculty. A superintendent or designee has final placement authority for a teacher transferred because of enrollment shifts or program changes. *Education Code 11.202; Atty. Gen. Op. DM-27 (1991)*

Transfers

A district's employment policy may include a provision for providing each current district employee with an opportunity to participate in a process for transferring to another school in or position with the district. *Education Code 11.1513(c)(3)*

Parent Notification

If a district assigns an inappropriately certified or uncertified teacher to the same classroom for more than 30 consecutive instructional days during the same school year, it shall provide written notice of the assignment to the parents or guardians of each student in that classroom. *Education Code 21.057* [See DBA]

Superintendent's Authority

All personnel are employed subject to assignment and reassignment by the Superintendent or designee when the Superintendent determines that the assignment or reassignment is in the best interest of the District. Reassignment shall be defined as a transfer to another position, department, or facility that does not necessitate a change in the employment contract of a contract employee. Any change in an employee's contract shall be in accordance with policy DC.

Any employee may request reassignment within the District to another position for which he or she is qualified.

When it becomes evident that staff will be reduced due to loss of funding, a program change, current projected staffing needs based on the master schedule, school closure, or consolidation, the department chief or designee in collaboration with the chief of Human Resources or designee will select personnel for release into the excess pool. [See DK3(REGULATION)]

The excess pool is a pool of qualified personnel who have been identified based on the criteria outlined in this policy. [See DK3(REGULATION)]

Except as overridden by the Superintendent, a principal shall not be required to accept any employee assigned to his or her campus for whom the principal does not approve.

Campus Assignments

The principal's criteria for approval of campus assignments and reassignments shall be consistent with District policy regarding equal opportunity employment, and with staffing patterns approved in the District and campus plans. [See BQ series] In exercising their authority to approve assignments and reassignments, principals shall work cooperatively with the central office staff to ensure the efficient operation of the District.

Supervision of Employees by Family Members

Principals and supervisors may hire and/or retain employees at the same school or work location who are related within the first, second, or third degree of consanguinity or affinity. Notwithstanding this provision, principals and supervisors are subject to the prohibition against employees reporting directly or indirectly to their own relatives, as described in this policy. [See also DBE(LEGAL), on Nepotism]

An employee shall not be assigned to work in a school, building, or department where the employee reports directly or indirectly to an administrator to whom the employee is related within the second degree by blood or marriage.

If such situations develop as a result of marriage, administrative transfer due to reorganization, or similar circumstance, both of the

employees involved shall bring it immediately to the attention of the appropriate administrator for resolution.

Supplemental Duties

Noncontractual supplemental duties for which supplemental pay is received may be discontinued by either party at any time. An employee who wishes to relinquish a paid supplemental duty may do so by notifying the Superintendent or designee in writing. Paid supplemental duties are not part of the District's contractual obligation to the employee and an employee shall hold no expectation of continuing assignment to any paid supplemental duty.

Work Schedules

The work week and daily time schedules shall be determined by the Superintendent or designee and principals.

Transitional Duty Program

A limited or transitional duty program shall be provided, in accordance with administrative regulations, for employees who have an occupational injury or occupational illness and are temporarily unable to return to full regular duty status. The light-duty assignment shall be temporary and, if rejected by the employee, shall result in a reduction of workers' compensation wage benefits. [See CRE(LEGAL)]

Temporary Assignment of an Employee Suspended with Pay

The Superintendent or designee may temporarily reassign an employee who has been suspended with pay from his or her regular duties when the Superintendent or designee determines it is in the best interest of the District. [See DFBA and DFCA(LEGAL)]

DUTY SCHEDULE

1. Regulations and working conditions for Maintenance, Printing, Textbooks, Transportation mechanic, and Warehouse personnel include:

WORKWEEK

a. The workweek will begin at 12:01 a.m. Monday. Normal workdays will be Monday through Friday.

WORK HOURS

b. The hours of work will be determined by the District administration.

SHIFT HOURS

c. Shift hours will be determined by the District administration. Each shift may consist of eight hours to be worked in any five-day period, excluding an unpaid lunch period.

HOURS PER DAY OR WEEK

d. The statements in this regulation may not be construed as a guarantee of a specific number of hours per day or week.

OVERTIME

e. All employees must work overtime when asked to do so. Failure of an employee to accept a reasonable overtime assignment when a situation during his or her duty schedule requires it, will be grounds for disciplinary action. See Reference (c).

CONSULTATION

2. This regulation has been through consultation (Administrative: April 16, 2002; Instructional: April 4, 2002; Noninstructional: April 9, 2002).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, will be responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DH(LOCAL)

(b) Board Policy DI(LOCAL)

(c) HISD Compensation Manual

ASSIGNMENT AND SCHEDULES

ASSIGNMENTS

1. Teacher aide assignments will be based on an eight-hour working day and a 40-hour workweek.

EXTERNALLY FUNDED TEACHER AIDES

2. The number of hours required per day and per week for teacher aides in externally funded programs will be determined by the program requirements.

CONSULTATION

3. This regulation has been through consultation (Administrative: April 16, 2002; Instructional: April 4, 2002; Noninstructional: April 9, 2002).

MAINTENANCE RESPONSIBILITY

4. The executive general manager Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DH(LOCAL)

(b) Board Policy DI(LOCAL)

Voluntary Teacher Transfers

The following guidelines will apply to voluntary teacher transfers:

- Requests for transfer may be made annually by the teacher during the open transfer period, which is scheduled by Human Resources. Human Resources will distribute and communicate the guidelines for implementation of the Voluntary Teacher Transfer Program. [See the *Transfer Request Form*];
- The teacher may contact a principal to express an interest in a transfer to their building; and
- The principal will notify the appropriate Human Resources generalist before the close of the open transfer period indicating a request to process a teacher transfer. A request to transfer may be submitted via e-mail. Transfer requests received after the close of the open transfer period will require the approval of the releasing principal.

Projected student needs and the projected staff assignment for the current and upcoming school year(s) may be considered when identifying the staff that will be reduced and placed in the excess pool, on a campus or department basis, during the application of this regulation. The considerations/criteria to identify the staff that are to be reduced will be on a campus/department basis and will be made in consultation with the Human Resources Department.

If it is determined that there is no available similar position at that campus/department. the affected staff member may be placed in the excess pool.

Involuntary Teacher Transfers

The administration reserves the right to make involuntary transfers when it deems them to be in the best interest of the individual, the school, or the District.

Excess Pool

Personnel identified for the excess pool will be selected in accordance with the following criteria: program change, certification, relative performance, seniority, and professional background.

Factors that will be considered when a principal initiates an involuntary transfer are as follows. (Criteria are not listed in order.):

- Qualifications for current or projected assignment.
    - Employees who do not have an evaluation on file with the district will not be considered for excess placement.
    - Spring budget: Employees on the approved appraisal system who have an evaluation rating below Proficient or Meets Expectation on file with the District.
        - "Unsatisfactory" evaluation rating.

- "Progressing I" evaluation rating.
- "Progressing II" evaluation rating.

- Relative performance: A comparison of the employee peers based on the employee's most recent evaluation on file with the District.
- Seniority: Consecutive length of service in the District. An authorized leave will not be considered a break in service.
- Professional background: Professional education and work experience related to the current or projected assignment will be considered in the following order:
  a. Additional state or national certification.
  b. Advanced degree in the content area.
  c. Years of service in the profession as verified in the service record.

The immediate supervisor will maintain documentation reflecting staffing decisions and will submit a copy of the documentation to HCM.

Appeal	A teacher who is dissatisfied with the decision of the principal may appeal under the established dispute resolution procedure, starting at Level II. [See DGBA(LOCAL)]
Contract Salary and Teaching Credentials	A teacher being involuntarily transferred or reassigned will be placed at the appropriate salary for the position and within the scope of their teaching credentials.
Maintenance Responsibility	The chief human resources officer is responsible for maintenance of this regulation.
Effective Date	This regulation is effective as of the adoption date, September 13, 2023.

ASSIGNMENTS TO NEWLY ESTABLISHED SCHOOLS

1. Teachers and other nonsupervisory professional personnel will be assigned to newly established schools according to the staffing authorizations determined by the regional superintendent and approved by the chief school administrator, School Administration. All assignments must be in accordance with the guidelines established by the State Board of Educator Certification regulations and established Board policy, and will be subject to review by the executive general manager, Human Resources.

SELECTION OF PERSONNEL FOR A NEWLY ESTABLISHED SCHOOL

2. Teachers and nonsupervisory professional personnel in the sending school(s) will be given preference for assignment to the newly established school(s). Assuming an anticipated decline in enrollment in the school(s) being relieved by the newly established school, professional personnel will be considered for reassignment in the following order:

   - Volunteers from the school(s) to be relieved;
   - Teachers in the teaching area or level to be reduced in said school(s);
   - Currently employed teachers requesting transfer to the newly established school(s); and
   - New applicants.

CONSULTATION

3. This regulation has been through consultation (Administrative: August 9, 2005; Instructional: September 1, 2005; Noninstructional: September 6, 2005).

MAINTENANCE RESPONSIBILITY

4. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

VOLUNTARY TRANSFER

1. An Operations employee who wants to transfer to a new or existing comparable position must submit a Request to Hire/Transfer Form to Human Resources. See Reference (b). The applicant will then become responsible for making arrangements for an interview with the personnel interviewer.

INVOLUNTARY TRANSFER

2. Circumstances may occur when it will be necessary to make involuntary transfers. Such transfers will occur when the administration deems them to be in the best interest of the individual, the department, or the District.

REORGANIZATION

3. An employee who is reassigned to a lower pay grade because of a reduction in the number of employees or reorganization will maintain his or her current salary for one year (12 months) from the date of the transfer. Following one year, the employee's pay will be adjusted according to the new pay grade. Exceptions to this policy must be approved in writing by the executive general manager, Human Resources. See Reference (a).

CONSULTATION

4. This regulation has been through consultation (Administrative: April 16, 2002; Instructional: April 4, 2002; Noninstructional: April 9, 2002).

MAINTENANCE RESPONSIBILITY

5. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) HISD Compensation Manual

(b) Form – Request to Hire/Transfer Form

TRANSFERS

1. The transfer of Maintenance, Warehouse, Textbooks, Transportation mechanic, and Printing personnel will occur as follows:

VOLUNTARY TRANSFER

a. A request for transfer to a vacant position will be processed on the basis of the employee's ability to perform the duties of the position.

INVOLUNTARY TRANSFER

b. Circumstances may occur when it will be necessary to make involuntary transfers. Such transfers will occur when the administration deems them to be in the best interest of the individual, the department, or the District. The employee's salary will be maintained at the current pay level for one year (12 months) from the date of the transfer. Following one year, the employee's pay will be adjusted according to the new pay range. Exceptions to this policy must be approved in writing by the executive general manager, Human Resources.

CONSULTATION

2. This regulation has been through consultation (Administrative: April 16, 2002; Instructional: April 4, 2002; Noninstructional: April 9, 2002).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCE:

(a) HISD Compensation Manual

TRANSFERS

1. Lateral transfers within Food Services may occur under the following two conditions:

VOLUNTARY TRANSFER

a. An employee may initiate a transfer to a new or existing comparable position by submitting a Request to Hire/Transfer Form to Food Services. See Reference (b). When such a position becomes available, the person will be notified. It then becomes the responsibility of the applicant to make arrangements for an interview with the area manager.

INVOLUNTARY TRANSFER

b. Circumstances may occur when it will be necessary to make involuntary transfers. Such transfers will occur when the administration deems them to be in the best interest of the individual, the department, or the District. The employee's salary will reflect policy as defined in Reference (a).

CONSULTATION

2. This regulation has been through consultation (Administrative: October 10, 2006; Noninstructional: November 8, 2006).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) HISD Compensation Manual

(b) Form – Request to Hire/Transfer Form

ASSIGNMENT AND SCHEDULES DK8
(REGULATION)

GENERAL INFORMATION

1. The principal has the primary responsibility for implementing and monitoring special education instructional and related services at the school level. See Reference (c). Salaries for special education school-based staff members are funded by federal, state, and local funds. These funds are in addition to the school allotment for general education staff members. Principals must ensure split-funding of special education staff members as outlined in the Texas Education Agency Special Education Rules and Regulations. See Reference (b). Special education staff members will be assigned by position control numbers and by major duty codes as identified by Human Resources. See Reference (a).

ASSIGNMENT OF SPECIAL EDUCATION TEACHERS

2. Special education teachers are responsible for providing instructional services for each child and adult student served as stated in the individualized education program. See Reference (c). Special education teachers must be assigned to instructional duties according to their major duty codes. When the special education teacher is assigned as the teacher of record for a general education class, the school must pay the teacher's salary for that portion of the instructional day. See Reference (b).

ASSIGNMENT OF SPECIAL EDUCATION TEACHER AIDES AND EMPLOYMENT SPECIALISTS

3. Special education teacher aides and employment specialists provide support to teachers and students. Special education teacher aides and employment specialists will s provide instruction to children and adult students with disabilities according to their major duty codes. When a special education teacher aide or employment specialist is assigned to duties other than those identified by his or her major duty code, the school must pay his or her salary for that portion of the instructional day.

CONSULTATION

4. This regulation has been through consultation (Administrative: September 11, 2007; Instructional: September 6, 2007).

MAINTENANCE RESPONSIBILITY

5. The assistant superintendent, Special Education, is responsible for maintenance of this regulation.

REFERENCES:

(a) Houston Independent School District PeopleSoft Report

(b) Special Education Rules and Regulations

(c) Special Education Services Operating Guidelines

State Board for Educator Certification
Criteria for Assignment of Public School Personnel

Note: The Board has adopted an innovation plan that affects application of provisions of this exhibit. [See AF(LOCAL)]

A public school employee must have the appropriate credentials for his or her current assignment unless the appropriate permit has been issued. The credentials appropriate to each assignment are set forth in the State Board for Educator Certification (SBEC) rules at 19 Administrative Code Chapter 231.

The following sections indicate where the credentialing requirements for various positions are located in the SBEC rules.

Teachers in general

Grade Level	SBEC Rule
Prekindergarten-Grade 6	19 TAC 231, Subchapter B
Grades 6-8	19 TAC 231, Subchapter C
Grades 9-12	19 TAC 231, Subchapter E

Teachers of elective, disciplinary, local credit, and innovative courses for grades 6-12

The following positions and assignments are addressed at 19 Administrative Code 231, Subchapter D.

- ROTC
- Athletics, cheerleading, drill team, and marching band
- Disciplinary alternative education programs
- Innovative course
- Local credit course
- Advanced Placement and International Baccalaureate courses
- Driver education

Teachers of special education and related services personnel

The following positions and assignments are addressed at 19 Administrative Code 231, Subchapter F.

- Special education teacher
- Teacher of adaptive physical education
- Full-time teacher of orthopedically impaired or other health impaired in a hospital class or home-based instruction
- Teacher of students with visual impairments
- Teacher of students with auditory impairments
- Teacher of gifted and talented students
- Special education counseling services
- Educational diagnostician
- Speech therapy services
- Vocational adjustment coordinator

Paraprofessional personnel

Educational aides are addressed at 19 Administrative Code 231.751.

Administrators and other instructional and professional support personnel

The following positions are addressed at 19 Administrative Code 231.753.

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

Licensed professional support personnel

The following positions are addressed at 19 Administrative Code 231.755.

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

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

Note: The board has adopted an innovation plan that affects application of provisions in this legally referenced policy. [See AF(LOCAL)]

Staff Development

Educator

The staff development provided by a district to an educator other than a principal must be conducted in accordance with standards developed by the district and designed to improve education in the district.

Principal

The staff development provided by a district to a principal shall be governed by Education Code 21.3541 and rules adopted under that section. [See DNB]

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

Professional Development Policy

A board shall annually review the SBEC continuing education and training clearinghouse published under Education Code 21.4514 and adopt a professional development policy that must:

1. Be guided by the recommendations for training in the clearinghouse;
2. Note any differences in the policy adopted by the district or school from the recommendations in the clearinghouse; and
3. Include a schedule of all training required for educators or other school personnel at the district or school.

To the extent of any conflict, a frequency requirement for the completion of training provided by statute prevails over a frequency requirement for that training included in the professional development policy.

Education Code 21.4515(a), (b)

Requirements for Training

In designing staff development for educators other than principals, a district must use procedures that, to the greatest extent possible, ensure the training included in the staff development:

1. Incorporates proactive instructional planning techniques using a framework that:
    a. Provides flexibility in the ways:
        (1) Information is presented;
        (2) Students respond or demonstrate knowledge and skills; and
        (3) Students are engaged;

b. Reduces barriers in instruction;

c. Provides appropriate accommodations, supports, and challenges; and

d. Maintains high achievement expectations for all students, including students with disabilities and students of limited English proficiency; and

2. Integrates inclusive and evidence-based instructional practices for all students, including students with disabilities.

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

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

Education Code 21.451(a-2), (b), (c)

Optional Training

Staff development may include training in:

1. Technology and digital learning; and

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

Technology and digital learning training must:

1. Discuss basic technology proficiency expectations and methods to increase an educator's digital literacy; and

2. Assist an educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices.

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

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

Required Training

Staff development must include training on:

1. Suicide prevention;

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

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

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

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

Instruction of Students with Disabilities

Definition

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

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

Education Code 21.001(3-a)

Requirements

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

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

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

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

Education Code 21.451(d)(2), (e)-(f)

Suicide Prevention

The required suicide prevention training may be satisfied through independent review of suicide prevention training material that complies with the guidelines developed by the Texas Education

Agency (TEA) and is offered online. *Education Code 21.451(d-2); 19 TAC 153.1013(d)*

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

1. Recognize students at risk of attempting suicide, including students who are or may be the victims of or who engage in bullying;

2. Recognize students displaying early warning signs and a possible need for early mental health or substance abuse intervention, which warning signs may include declining academic performance, depression, anxiety, isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others;

3. Intervene effectively with students described above by providing notice and referral to a parent or guardian so appropriate action, such as seeking mental health or substance abuse services, may be taken by a parent or guardian; and

4. Assist students in returning to school following treatment of a mental health concern or suicide attempt.

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

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

A district may satisfy a requirement to implement a program in the area of substance abuse prevention and intervention by providing instruction related to youth substance use and abuse education under Education Code 38.040. [See EHAC]

Education Code 38.351(e), (g), (g-1), (h); 19 TAC 153.1013

Staff Development Account

A district that receives resources from the commissioner of education's staff development account must pay to the commissioner for

deposit in the account an amount equal to one-half of the cost of the resources provided to the district. *Education Code 21.453(c)*

Child Abuse, Trafficking, and Maltreatment

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

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

The training must include:

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

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

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

Education Code 38.0041(c)-(f); 19 TAC 103.1401(d)

Trauma-Informed Care

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

Mental Health

A district shall require each district employee who regularly interacts with students enrolled at the district to complete an evidence-based mental health training program designed to provide instruction to participants regarding the recognition and support of children and youth who experience a mental health or substance use issue that may pose a threat to school safety.

A district may not require a district employee who has previously completed mental health training offered by a local mental health authority under Health and Safety Code 1001.203 to complete the required training.

Education Code 22.904

To complete the required evidence-based mental health training program, personnel who regularly interact with students shall participate and complete the general training program, participate and complete the training program related to local school district practices and procedures, and submit and maintain supporting documentation of completion. *19 TAC 153.1015(b)*

Records

School districts shall require each district employee to provide the certificate of completion of the general training program to the school district.

Documentation of the training program related to local school district practices and procedures may be satisfied when the employee submits to the district an acknowledgement form signed by the employee who received the current training and a copy of the local procedures and practices that are published in the district handbook and/or district improvement plan.

Documentation of training for the mental health training program must be kept by the school district and made available to TEA upon request, which may include a reporting process, for the duration of the employee's employment with the district.

19 TAC 153.1015(f)(1)-(3)

Student Discipline

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

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

Education Code 37.0181

Test Administration

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

Cybersecurity

At least once each year, each employee of a district must complete a cybersecurity training program certified under Government Code 2063.102. *Gov't Code 2063.103(a)*

Notwithstanding Government Code 2063.103 above, only the district's cybersecurity coordinator is required to complete the cybersecurity training on an annual basis. Any other school district employee required to complete the cybersecurity training shall complete the training as determined by the district, in consultation with the district's cybersecurity coordinator. *Education Code 11.175(h-1)* [See CQB]

Artificial Intelligence Training

At least once each year, an employee of a school district must complete an artificial intelligence training program certified under Government Code 2054.5193. *Gov't Code 2054.5191(a)*

Notwithstanding Government Code 2054.5191, only the district's cybersecurity coordinator is required to complete the artificial intelligence training on an annual basis. Any other district employee required to complete the artificial intelligence training shall complete the training as determined by the district, in consultation with the district's cybersecurity coordinator. *Education Code 11.175(h-1)* [See CQD]

Special Programs

A district shall ensure that:

Teacher Literacy Achievement Academies (Reading Academies)

1. Not later than the 2022-23 school year, each classroom teacher in kindergarten or first, second, or third grade and each principal at a campus with kindergarten or first, second, or third grade has attended a teacher literacy achievement academy developed under Education Code 21.4552; and

2. Each classroom teacher and each principal initially employed in a grade level or at a campus described above for the 2022-23 school year or a subsequent school year has attended a teacher literacy achievement academy developed under Education Code 21.4552 by the end of the teacher's or principal's first year of placement in that grade level or campus.

Education Code 28.0062(a)(2)

[See EHAB for kindergarten-grade 3 reading standards.]

Mathematics Achievement Academies

Each school district shall ensure that not later than the 2030-31 school year, each classroom teacher that provides instruction in mathematics to students in kindergarten through third grade and each principal, assistant principal, mathematics instructional coach, and mathematics interventionist at a campus with one of those grade levels has attended a teacher mathematics achievement academy developed under Education Code 21.4553 and each classroom teacher and principal initially employed in such a grade level or at a campus for the 2030-31 school year or a subsequent school year has attended a teacher mathematics achievement academy developed under Education Code 21.4553 by the end of the teacher's or principal's first year of placement in that grade level or campus. *Education Code 28.0071(a)(2)*

Gifted and Talented Education

A district shall ensure that:

1. Prior to assignment in the program or within one semester of assignment, teachers who provide instruction and services that are a part of the program for gifted/talented students [see EHBB] have a minimum of 30 hours of professional learning that includes nature and needs of gifted/talented students, assessing student needs, and curriculum and instruction for gifted/talented students;

2. Teachers who provide instruction and services that are a part of the program for gifted/talented students receive a minimum of six hours annually of professional learning in gifted/talented education; and

3. Administrators and counselors who have authority for program decisions have a minimum of six hours of professional learning that includes nature and needs of gifted/talented students and program options with an update after legislative sessions.

19 TAC 89.2

Elective Bible Course

A teacher of an elective Bible course offered under Education Code 28.011 [see EMI] must hold a certificate in language arts, so-

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

Texas English Language Proficiency Assessment System Training

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

Automated External Defibrillators and CPR

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

Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other employee specified by the commissioner, and each student who serves as an athletic trainer, must participate in the instruction in CPR and the use of an AED. Identified employees must receive and maintain certification in CPR and the use of an AED from the American Heart Association, the American Red Cross, or a similar nationally recognized association.

Education Code 22.902

Extracurricular Activity Safety

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

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

The safety training program must include:

1. Certification of participants by the American Red Cross, the American Heart Association, or a similar organization or by the University Interscholastic League;
2. Current training in:

a. Emergency action planning;

b. Communicating effectively with 9-1-1 emergency service operators and other emergency personnel; and

c. Recognizing symptoms of potentially catastrophic injuries, including head and neck injuries, concussions, injuries related to second impact syndrome, asthma attacks, heatstroke, cardiac arrest, and injuries requiring use of a defibrillator; and

3. A safety drill that incorporates the training and simulates various injuries described above.

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

Records

A superintendent shall maintain complete and accurate records of the district's compliance and the district shall make available to the public proof of compliance for each person employed by or volunteering for the district who is required to receive safety training.

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

Education Code 33.206; 19 TAC 76.1003(e)

Steroids

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

1. The educational program developed by the UIL regarding the health effects of steroids; or

2. A comparable program developed by the district or a private entity with relevant expertise.

Education Code 33.091(c-1)

Concussions

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

1. A coach of an interscholastic athletic activity shall take a course approved by the UIL that provides for not less than two hours of training in the subject matter of concussions, including evaluation, prevention, symptoms, risks, and long-term effects.

2. An athletic trainer who serves as a member of a district's concussion oversight team shall take a course concerning the subject matter of concussions that meets the requirements

set by the Texas Department of Licensing and Regulation (TDLR).

3. A school nurse or licensed health-care professional, other than an athletic trainer, who serves as a member of a district's concussion oversight team shall take a course approved by the UIL for coaches or that meets the requirements set by TDLR for athletic trainers, or a course concerning the subject matter of concussions that has been approved for continuing education credit by the appropriate licensing authority for the profession.

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

Education Code 38.158

Seizure Recognition and Related First Aid

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

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

Education Code 38.033(a), (b)

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

Preamble: Transformation of Professional Development

In support of the District's goal to improve human capital, we, the Houston ISD Board of Education, believe that staff members must be provided with rigorous professional development opportunities that are aligned with identified needs of the individual.

Staff Development

The District shall support the continued professional development of its employees by providing staff development opportunities to ensure that each employee is prepared to successfully contribute in their role in reaching the overall goal of increasing student achievement. Staff development activities shall be rigorous and targeted at identified deficiencies as indicated by student performance data.

Definition

"Staff development" shall be defined as the facilitation of activities that assist staff members to increase their capacity through continual improvement of their job-related skills, knowledge, and performance. Staff development may include models that foster effective practices such as individually guided models, observation-assessment models, development/improvement process models, inquiry models, training models, and other models meeting school/administrative and/or District/department needs.

The District shall provide, and employees may be required to participate in, staff development opportunities to increase knowledge and enhance skills and to be prepared to successfully perform their duties and responsibilities, as well as to address their individual needs as identified through their performance evaluations and/or needs assessments.

Decisions regarding staff development needs shall include, but not be limited to, consideration of student performance and value-added data. All staff development throughout the District shall be in alignment with the District's statement of beliefs and visions, the goals of the District Improvement Plan, including District initiatives, and the school/administrative District/department improvement plan. All staff development shall focus on improving and/or supporting student achievement. [See policies at BQA, BQB]

Staff Development Plan

The Superintendent shall recommend the District's professional development plan for all District employees. The Board shall annually review the professional development clearinghouse published by the State Board for Educator Certification (SBEC) and annually approve the District's professional development plan. The District's professional development plan must:

1. Be guided by the SBEC clearinghouse training recommendations;

2. Note any differences in the District's plan from the clearing-house recommendations; and

3. Include a schedule of the required professional development for all District employees.

General Principles

All non-teachers and other professional employees who work 20 standard hours or more per week shall be annually appraised in the performance of their duties and shall be provided assistance to improve job performance. The appraisal policies and regulations, annual Board-approved appraisal calendars, and District manuals shall govern the employee evaluation and appraisal system consistent with the general principles set out below.

Definition — Other Professional Employees

Other professional employees shall include school counselors, nurses, librarians, magnet coordinators, social workers, central office professionals, and other campus employees who are not appraised in the Teacher Excellence System (TES), Leader Excellence and Development (LEAD), or the Executive Director Appraisal System (EDAS).

Criteria

The employee's performance of assigned duties and other job-related criteria shall provide the basis for the employee's appraisal. Employees shall be informed of the criteria on which they will be appraised at the beginning of the appraisal year.

Goal-Setting and Beginning-of-Year Conference

Employees shall participate in a goal-setting conference at the beginning of the appraisal year with their assigned appraiser.

Performance Review

Appraisal ratings shall be based on the appraisal instrument and cumulative performance data gathered by supervisors throughout the year. Employees participating in the annual appraisal process shall have an end-of-year conference to discuss the written appraisal and may have as many conferences about performance of duties as the appraiser deems necessary or as requested by the employee.

New Hires to the District

An employee who was hired within 90 days of the end of the appraisal period shall not have an annual appraisal. [Refer to the annual Board-approved appraisal calendar.]

Missed Deadlines

In the event an appraisal deadline is missed by either the employee or appraiser, the appraiser shall document the reason in a memorandum to the employee and a copy shall be sent to the appraiser's manager. The appraisal process shall continue. A missed deadline shall not invalidate an appraisal document.

Standard Hours Change

An employee whose standard hours increase to 20 hours or more per week prior to 90 days until the end of the appraisal period shall be appraised. An employee whose standard hours increase to 20 hours or more per week within the 90 days until the end of the appraisal period shall not be appraised.

Employee Position Change	An employee whose position changes to a non-teacher position any time before the end of the appraisal period shall be appraised on the Non-Teacher Appraisal System.
Documentation and Records	Official appraisal records shall be maintained throughout a person's employment with the District as outlined in the District's Records Management Manuals.
Confidentiality	A document evaluating the performance of a teacher or administrator shall be confidential.
Employee Copy	All employees shall receive a copy of their annual appraisal.
Third-Party Input	The appraiser shall verify and document third-party information that the appraiser and/or employee want to use as cumulative data. Any documentation that will influence the employee's annual appraisal ratings must be shared in writing with the employee within 10 working days of the appraiser's knowledge of the occurrence. A parent or legal guardian must sign if the initiating party is under 18 years of age.
Employee Response	Employees may submit a written response or rebuttal to their appraiser within 10 working days of receipt of a written document. The appraiser will attach the employee's written response to the appraisal document.
Application of Assessment Systems	All aspects of the appraisal systems shall be applied consistently and fairly to all employees. When an employee feels that any one of these procedures has been misapplied, a dispute may be filed in accordance with the Dispute Resolution Process at DGBA(LOCAL). However, unless the procedure in question was maliciously misapplied, applied in bad faith, or not applied by an appraiser, such misapplication or failure to follow the procedures shall not prevent or be any impediment to the Board or the Superintendent changing any employee's employment status under the terms of the employment contracts, if applicable, and state and federal laws.
Complaints	Employees may present complaints regarding the evaluation and appraisal process in accordance with the District's Dispute Resolution Process. [See DGBA(LOCAL)]

APPRAISAL: NONCONTRACT EMPLOYEES

1. All noncontract employees will be observed and assessed yearly by the appropriate administrator or his or her designee in accordance with the applicable Board-approved appraisal program or instrument. See Reference (a).

GUIDELINES

EMPLOYEE NOTIFICATION

a. The evaluation procedure will be explained to all employees who have appraisal programs or who will be assessed using alternate methods. All new employees will be apprised of evaluation procedures as appropriate to their job descriptions. All evaluations will be conducted openly and with the knowledge of the employee.

EMPLOYEE RECEIPT

b. Once a formal evaluation has been completed, the employee will sign the document indicating receipt of the evaluation.

EMPLOYEE REBUTTAL

c. Should an employee disagree with an evaluation, he or she may attach a statement of rebuttal to the evaluation explaining the area(s) of disagreement.

DEFICIENCY CORRECTION

d. Should an evaluation reveal that the employee is deficient in the performance of his or her duties or responsibilities, steps will be taken by the supervisor and employee to correct the deficiencies. The methods employed will be consistent with policies and procedures regarding discipline. See Reference (b).

RECORDS

e. Human Resources will be responsible for filing all evaluation reports in the personnel folder or other appropriate location.

CONSULTATION

2. This regulation has been through consultation (Administrative: March 7, 2006; Instructional: March 2, 2006; Noninstructional: March 7, 2006).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DN(LOCAL)

(b) Board Policy DCD(LOCAL)

PERFORMANCE APPRAISAL DN3
(REGULATION)

APPRAISAL SYSTEM GUIDELINES

1. The Houston Independent School District (HISD) appraisal system administrative manuals approved by the HISD Board of Education will govern the appraisal system's operation and procedures and will be considered an extension of Board policy. See References (a) and (b). Administrators or administrative support personnel assigned pay grades 14 and above will be assessed by their immediate superior using the assessment instrument provided for the specific position. The criteria as set forth in the assessment instrument will reflect the employee's performance, productivity, and contribution to the District, based on the official job description for the individual position in accordance with the HISD administrative appraisal system, school-site, non-school site, and narrative.

CONSULTATION

2. This regulation has been through consultation (Administrative: April 16, 2002; Instructional: April 4, 2002; Noninstructional: April 9, 2002).

MAINTENANCE RESPONSIBILITY

3. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) HISD Appraisal System Non-School Site Administrator Manual

(b) HISD Appraisal System School Site Administrator Manual

Note: The board has adopted an innovation plan that affects application of provisions in this legally referenced policy. [See AF(LOCAL)]

Table of Contents

Teacher Appraisal 2
Interim Evaluations and Guidance 2
Required Components 2
Notice and Use of Evaluations 2
Role of Extracurricular Activities 2
Disciplinary Referrals 3
Access to Evaluations 3
Confidentiality 3
Two Appraisal Methods 3
Selection of Appraisal Method 3
Notice to Service Center 3
State Method (T-TESS) 4
Orientation and Annual Review 4
Appraisers 4
Appraisal Calendar 5
Assessment of Teacher Performance 6
Appraisal Process 9
Summative Report 11
End-of-Year Conference 11
Additional Documentation 12
Teacher Response and Rebuttal 12
Request for Second Appraisal 12
District Option 13
Development of Appraisal System 13
Appraisal Process 14
Board Acceptance 14
Campus Option 14
Development of Appraisal System 14
Appraisal Process 14
Board Acceptance 15
Appraisers 15

Teacher Appraisal

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

A teacher appraisal must be done at least once for each school year. A teacher may be appraised less frequently if the teacher agrees in writing and the teacher's most recent evaluation rated the teacher as at least proficient, or the equivalent, and did not identify any area of deficiency. A teacher who is appraised less frequently than annually must be appraised at least once during each period of five school years.

Education Code 21.203, .352(c)

Interim Evaluations and Guidance

In addition to conducting a complete appraisal as frequently as required by Education Code 21.352(c), a district shall require that appropriate components of the appraisal process, such as classroom observations and walk-throughs, occur more frequently as necessary to ensure that a teacher receives adequate evaluation and guidance. A district shall give priority to conducting appropriate components more frequently for inexperienced teachers or experienced teachers with identified areas of deficiency. *Education Code 21.352(c-1)*

Required Components

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

1. The implementation of discipline management procedures is the teacher's pedagogical practices that produce student engagement and establish the learning environment.
2. The performance of teachers' students is how the individual teacher's students progress academically in response to the teacher's pedagogical practice as measured at the individual teacher level by one or more student growth measures.

19 TAC 150.1001(f)

Notice and Use of Evaluations

A district shall use a teacher's consecutive appraisals from more than one year, if available, in making employment decisions and developing career recommendations for the teacher. *Education Code 21.352(e)*

The district shall notify a teacher of the results of any appraisal of the teacher in a timely manner so that the appraisal may be used as a developmental tool by the district and the teacher to improve the overall performance of the teacher. *Education Code 21.352(f)*

Role of Extracurricular Activities

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

Disciplinary Referrals

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

Access to Evaluations

A district shall maintain a written copy of the evaluation of each teacher's performance in the teacher's personnel file.

Each teacher is entitled to receive a written copy of the evaluation promptly on its completion. The evaluation and any rebuttal may be given to another school district at which the teacher has applied for employment at the request of that district.

Education Code 21.352(c)

Confidentiality

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

Two Appraisal Methods

A district shall use one of the following methods to appraise teachers:

1. The teacher appraisal system recommended by the commissioner of education [see State Method (T-TESS), below]; or
2. A local teacher appraisal system [see District Option and Campus Option, below].

Education Code 21.352(a); 19 TAC 150.1001(a)

Selection of Appraisal Method

A superintendent, with the approval of a board, may select the state appraisal method. Each district or campus wanting to select or develop an alternative teacher appraisal system must follow the requirements set forth below at District Option or Campus Option. *19 TAC 150.1001(c)*

Notice to Service Center

A superintendent shall notify the executive director of the district's regional education service center in writing of the district's choice of appraisal system when using an alternative to the state appraisal method and detail the components of that system by the first day of instruction for the school year in which the alternative system is used.

A district shall submit annually to its service center a summary of the campus-level evaluation scores from the state appraisal

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

19 TAC 150.1008

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

State Method (T-TESS)

The commissioner's recommended teacher appraisal system, the Texas Teacher Evaluation and Support System (T-TESS), was developed in accordance with Education Code 21.351. *19 TAC 150.1001(b), .1002(a)*

Orientation and Annual Review

A district shall ensure that all teachers are provided with an orientation to the T-TESS no later than the final day of the first three weeks of school and at least two weeks before the first observation when:

1. The teacher is new to the district;
2. The teacher has never been appraised under the T-TESS; or
3. District policy regarding teacher appraisal has changed since the last time the teacher was provided with an orientation to the T-TESS.

The teacher orientation shall be conducted in a face-to-face setting during a district's first year of T-TESS implementation and include all state and local appraisal policies and the local appraisal calendar. In addition to the orientation, campuses may hold other sessions sufficient in length allowing teachers to actively participate in a discussion of the T-TESS specifics and to have their questions answered.

19 TAC 150.1006

Appraisers

The teacher appraisal process requires at least one certified appraiser. An appraiser must be the teacher's supervisor or a person approved by the board.

Campus Administrator

Only a campus administrator may act as a certified appraiser, except as provided below.

Under the T-TESS, a "campus administrator" includes a principal, an assistant principal, an administrator who holds a comparable administrator/supervisor certificate established by the State Board for Educator Certification, or supervisory staff whose job description includes the appraisal of teachers and who is not a classroom teacher.

An individual other than a campus administrator may act as a certified appraiser if:

1. The individual has been certified by completing the required training prior to conducting appraisals; and
2. In the case where the certified appraiser is a classroom teacher, the certified appraiser:
    a. Conducts appraisals at the same school campus at which the certified appraiser teaches if the certified appraiser is the chair of a department or grade level whose job description includes classroom observation responsibilities; or
    b. Does not conduct appraisals of classroom teachers who teach at the same campus as the certified appraiser if the certified appraiser is not a department or grade-level chair.

Training and Certification

Before conducting appraisals, an appraiser must be certified by having satisfactorily completed the state-approved T-TESS appraiser training and having passed the T-TESS certification examination, and must have received Instructional Leadership Training (ILT), Instructional Leadership Development (ILD), or Advanced Educational Leadership (AEL) certification. Appraisers without ILT, ILD, or AEL certification before January 1, 2016, may not take ILT or ILD to satisfy the requirement. Periodic recertification and training shall be required.

Education Code 21.351(c); 19 TAC 150.1005

Appraisal Calendar

A district shall establish a calendar for teacher appraisals and provide that calendar to teachers within three weeks from the first day of instruction. The appraisal period for each teacher must include all of the days of the teacher's contract.

Observations during the appraisal period must be conducted during the required days of instruction for students during one school year.

The appraisal calendar shall:

1. Exclude observations in the two weeks after the day of completion of the T-TESS orientation in the school years when an orientation is required; and
2. Indicate a period for end-of-year conferences that ends no later than 15 working days before the last day of instruction for students.

19 TAC 150.1003(d)

A teacher may be given advance notice of the date or time of an appraisal, but advance notice is not required. *Education Code 21.352(d); 19 TAC 150.1003(c)*

Assessment of Teacher Performance

Each teacher must be appraised each school year, except as provided below at Less-Than-Annual Appraisal. Whenever possible, an appraisal shall be based on the teacher's performance in fields and teaching assignments for which he or she is certified. *19 TAC 150.1003(a)*

During the appraisal period, the certified appraiser shall evaluate and document teacher performance specifically related to the domain criteria as identified in 19 Administrative Code 150.1002(a) and the performance of teachers' students as defined in 19 Administrative Code 150.1001(f)(2). *19 TAC 150.1003(e)*

Less-Than-Annual Appraisal

A teacher may receive a full appraisal less than annually if the teacher agrees in writing and the teacher's most recent full appraisal resulted in the teacher receiving summative ratings of at least proficient on nine of the sixteen dimensions and did not identify any area of deficiency, defined as a rating of Improvement Needed or its equivalent, on any of the sixteen dimensions identified in 19 Administrative Code 150.1002(a) or the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2). A teacher who receives a full appraisal less than annually must receive a full appraisal at least once during each period of five school years.

District policy may stipulate:

1. Whether the option to receive a full appraisal less frequently than annually is to be made available to teachers;
2. Whether the option to receive a full appraisal less frequently than annually is to be adopted district-wide or is to be campus specific;
3. If the appraisal accompanying a teacher new to a district or campus meets this option, whether the appraisal is to be accepted or whether that teacher is to be appraised by the new campus administrator; and
4. Whether a certified appraiser may place a teacher on the traditional appraisal cycle as a result of performance deficiencies documented in accordance with 19 Administrative Code 150.1003(b)(6) and (f) (cumulative data regarding teacher performance in addition to formal classroom observations).

A school district may choose annually to review the written agreement to have less frequent full appraisals with the teacher. How-

ever, at the conclusion of the school year, the district may modify appraisal options through board policy and may make changes to expectations for appraisals that apply to all teachers regardless of a teacher's participation in the appraisal option in the previous year(s).

In a year in which a teacher does not receive a full appraisal due to meeting the requirements, a teacher shall participate in:

1. The Goal-Setting and Professional Development Plan process;
2. The performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2); and
3. A modified end-of-year conference that addresses:
    a. The progress on the Goal-Setting and Professional Development Plan;
    b. The performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2); and
    c. The following year's Goal-Setting and Professional Development plan.

19 TAC 150.1003(l)

Domains and Dimensions

Each teacher shall be appraised on the following domains and dimensions of the T-TESS rubric that is aligned to the Texas Teacher Standards in 19 Administrative Code Chapter 149 (Commissioner's Rules Concerning Educator Standards):

1. Domain I. Planning or Alternate Domain I. Lesson Internalization, which includes the following dimensions:
    a. Standards and alignment;
    b. Data and assessment;
    c. Knowledge of students; and
    d. Activities.
2. Domain II. Instruction, which includes the following dimensions:
    a. Achieving expectations;
    b. Content knowledge and expertise;
    c. Communication;
    d. Differentiation; and

e. Monitor and adjust.

3. Domain III. Learning Environment, which includes the following dimensions:

   a. Classroom environment, routines, and procedures;

   b. Managing student behavior; and

   c. Classroom culture.

4. Domain IV. Professional Practices and Responsibilities, which includes the following dimensions:

   a. Professional demeanor and ethics;

   b. Goal setting;

   c. Professional development; and

   d. School community involvement.

The evaluation of each of the dimensions above shall consider all data generated in the appraisal process. The data for the appraisal of each dimension shall be gathered from pre-conferences, observations, post-conferences, end-of-year conferences, the Goal-Setting and Professional Development Plan process, and other documented sources.

Each teacher shall be evaluated on the 16 dimensions in Domain I or Alternate Domain I and Domains II-IV identified above using the following categories:

1. Distinguished;

2. Accomplished;

3. Proficient;

4. Developing; and

5. Improvement needed.

Beginning with the 2024-25 school year, teachers may be appraised using Domain I or Alternate Domain I based on the alignment of teacher responsibilities to lesson planning or lesson internalization.

Student Performance

Beginning with the 2017-18 school year, each teacher appraisal shall include the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2) (student growth measures).

If calculating a single overall summative appraisal score for teachers, the performance of teachers' students, as defined in 19 Ad-

ministrative Code 150.1001(f)(2), shall count for at least 20 percent of a teacher's summative score.

Each teacher shall be evaluated on the performance of teachers' students using one of the terms from the following categories:

1. Distinguished or well above expectations;
2. Accomplished or above expectations;
3. Proficient or at expectations;
4. Developing or below expectations; or
5. Improvement needed or well below expectations.

19 TAC 150.1002

Appraisal Process

The annual teacher appraisal, or full appraisal, shall include:

1. A completed and appraiser-approved Goal-Setting and Professional Development Plan that shall be:
    a. Submitted to the teacher's appraiser within the first six weeks from the day of completion of the T-TESS orientation for teachers in their first year of appraisal under the T-TESS or for teachers new to the district; or
    b. Initially drafted in conjunction with the teacher's end-of-year conference from the previous year, revised as needed based on changes to the context of the teacher's assignment during the current school year, and submitted to the teacher's appraiser within the first six weeks of instruction; and
    c. Maintained throughout the course of the school year by the teacher to track progress in the attainment of goals and participation in professional development activities detailed in the approved plan;
    d. Shared with the teacher's appraiser prior to the end-of-year conference; and
    e. Used after the end-of-year conference in the determination of ratings for the goal setting and professional development dimensions of the T-TESS rubric;
2. For a teacher in the first year of appraisal under the T-TESS or for teachers new to the district, a Goal-Setting and Professional Development Plan conference prior to the teacher submitting the plan to the teacher's appraiser;

3. After a teacher's first year of appraisal under the T-TESS within the district, an observation pre-conference conducted prior to announced observations;

4. At least one classroom observation of a minimum of 45 minutes, with additional walk-throughs and observations conducted at the discretion of the certified appraiser and in accordance with the Education Code 21.352(c-1). Additional observations and walk-throughs do not require an observation post-conference. Additional observations and walk-throughs do require a written summary if the data gathered during the additional observation or walk-through will impact the teacher's summative appraisal ratings, in which case the written summary shall be shared within 10 working days after the completion of the additional observation or walk-through. Title 19 Administrative Code 150.1004 (Teacher Response and Appeals) applies to a written summary of an additional observation or walk-through that will impact the teacher's summative appraisal ratings;

5. An observation post-conference that:

    a. Shall be conducted within 10 working days after the completion of an observation;

    b. Is diagnostic and prescriptive in nature;

    c. Includes a written report of the rating of each dimension observed that is presented to the teacher only after a discussion of the areas for reinforcement and areas for refinement; and

    d. Can allow for, at the discretion of the appraiser, a revision to an area for reinforcement or refinement based on the post-conference discussion with the teacher;

6. Cumulative data from written documentation collected regarding job-related teacher performance, in addition to formal classroom observations;

7. An end-of-year conference that:

    a. Reviews the appraisal data collected throughout the current school year and previous school years, if available;

    b. Examines and discusses the evidence related to the teacher's performance on the four dimensions of Domain IV of the T-TESS rubric;

    c. Examines and discusses evidence related to the performance of teachers' students, as defined in 19 Adminis-

trative Code 150.1001(f)(2) (student growth measures), when available; and

d. Identifies potential goals and professional development activities for the teacher for the next school year; and

8. A written summative annual appraisal report to be provided to the teacher within 10 working days of the conclusion of the end-of-year conference.

19 TAC 150.1003(b)

Shorter Observations

By written, mutual consent of the teacher and the certified appraiser, the required 45 minutes of observation may be conducted in shorter time segments. The time segments must aggregate to at least 45 minutes. *19 TAC 150.1003(g)*

Cumulative Data

The certified appraiser is responsible for documentation of cumulative data. Any third-party information from a source other than the certified appraiser that the certified appraiser wishes to include as cumulative data shall be verified and documented by the certified appraiser. Any documentation that will influence the teacher's summative annual appraisal report must be shared in writing with the teacher within 10 working days of the certified appraiser's knowledge of the occurrence. The principal shall also be notified in writing of the cumulative data when the certified appraiser is not the teacher's principal. *19 TAC 150.1003(f)*

Summative Report

A written summative annual appraisal report shall be shared with the teacher no later than 15 working days before the last day of instruction for students. The written summative annual appraisal report shall be placed in the teacher's personnel file by the end of the appraisal period. *19 TAC 150.1003(h)*

End-of-Year Conference

An end-of-year conference shall be held within a time frame specified on the district calendar, no later than 15 working days before the last day of instruction for students. The end-of-year conference shall focus on the data and evidence gathered throughout the appraisal year; the teacher's efforts as they pertain to Domain IV; the results of the performance of teachers' students, when available, as defined in 19 Administrative Code 150.1001(f)(2); and the potential goals and professional development plans for the following year. The written summative annual appraisal report shall be shared with the teacher within 10 working days following the conclusion of the end-of-year conference but no later than 15 working days before the last day of instruction.

In cases where the certified appraiser is not an administrator on the teacher's campus, either the principal, assistant principal, or

another supervisory staff member designated as an administrator on the campus must participate in the end-of-year conference.

19 TAC 150.1003(i), (j)

Additional Documentation

Any documentation collected after the end-of-year conference but before the end of the contract term during one school year may be considered as part of the appraisal of a teacher. If the documentation affects the teacher's evaluation in any dimension, another summative report shall be developed to inform the teacher of the changes. *19 TAC 150.1003(k)*

Teacher Response and Rebuttal

A teacher may submit a written response or rebuttal at the following times:

1. For Domain I or Alternate Domain I, Domain II, and Domain III, after receiving a written observation summary or any other written documentation related to the ratings of those three domains; or
2. For Domain IV and for the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2), after receiving a written summative annual appraisal report.

Any written response or rebuttal must be submitted within 10 working days of receiving a written observation summary, a written summative annual appraisal report, or any other written documentation associated with the teacher's appraisal. A teacher may not submit a written response or rebuttal to a written summative annual appraisal report for the ratings in Domain I or Alternate Domain I, Domain II, and Domain III if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to submit a written response or rebuttal.

Education Code 21.352(c); 19 TAC 150.1004(a), (b)

Request for Second Appraisal

A teacher may request a second appraisal by another certified appraiser at the following times:

1. For Domain I or Alternate Domain I, Domain II, and Domain III, after receiving a written observation summary with which the teacher disagrees; or
2. For Domain IV and for the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2), after receiving a written summative annual appraisal report with which the teacher disagrees.

The second appraisal must be requested within 10 working days of receiving a written observation summary or a written summative

annual appraisal report. A teacher may not request a second appraisal by another certified appraiser in response to a written summative annual appraisal report for the ratings of dimensions in Domains I, II, and III if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to request a second appraisal.

A teacher may be given advance notice of the date or time of a second appraisal, but advance notice is not required.

The second appraiser shall make observations and walk-throughs as necessary to evaluate the dimensions in Domains I-III or shall review the Goal-Setting and Professional Development Plan for evidence of goal attainment and professional development activities, when applicable. Cumulative data may also be used by the second appraiser to evaluate other dimensions.

A district shall adopt written procedures for determining the selection of second appraisers. The procedures shall be disseminated to each teacher at the time of employment and updated annually or as needed.

Education Code 21.352(c); 19 TAC 150.1004(c)-(g)

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

District Option

A district that does not choose to use the T-TESS must develop its own teacher-appraisal system supported by locally adopted policy and procedures and by the processes outlined below.

Development of Appraisal System

The district-level planning and decision-making committee shall:

1. Develop an appraisal process;
2. Develop evaluation criteria, including discipline management and performance of the teachers' students; and
3. Consult with the campus-planning and decision-making committee on each campus in the district.

Appraisal Process

The appraisal process shall include:

1. At least one appraisal each year, or less frequently if in accordance with Education Code 21.352(c) [see Teacher Appraisal, above];

2. A conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and

3. Criteria based on observable, job-related behavior, including:

   a. Teachers' implementation of discipline management procedures, as defined in 19 Administrative Code 150.1001(f)(1); and

   b. Beginning with the 2017-18 school year, the performance of the teachers' students as defined in 19 Administrative Code 150.1001(f)(2).

Board Acceptance

A district-level planning and decision-making committee shall submit the appraisal process and criteria to the superintendent, who shall submit the appraisal process and criteria to the board with a recommendation to accept or reject.

The board may accept or reject, with comments, the appraisal process and performance criteria, but may not modify the process or criteria.

Education Code 21.352(a)(2), (b); 19 TAC 150.1007(a)

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

Campus Option

A campus within a district may choose to develop a local appraisal system.

Development of Appraisal System

The campus planning and decision-making committee shall:

1. Develop an appraisal process;

2. Develop evaluation criteria, including discipline management and performance of the teachers' students; and

3. Submit the process and criteria to the district-level planning and decision-making committee.

Appraisal Process

The appraisal process shall include:

1. At least one appraisal each year, or less frequently if in accordance with Education Code 21.352(c) [see Teacher Appraisal above];

2. A conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and

3. Criteria based on observable, job-related behavior, including:

    a. Teachers' implementation of discipline management procedures, as defined in 19 Administrative Code 150.1001(f)(1); and

    b. Beginning with the 2017-18 school year, the performance of the teachers' students as defined in 19 Administrative Code 150.1001(f)(2).

Board Acceptance

Upon submission of the appraisal process and criteria to the district-level planning and decision-making committee, the committee shall make a recommendation to accept or reject the appraisal process and criteria and transmit that recommendation to the superintendent.

The superintendent shall submit to the board:

1. The recommended campus appraisal process and criteria;

2. The district-level planning and decision-making committee's recommendation; and

3. The superintendent's recommendation.

The board may accept or reject, with comments, an appraisal process and performance criteria, but may not modify the process or criteria.

Education Code 21.352(a)(2), (b); 19 TAC 150.1007(b)

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

Appraisers

A district that locally develops and adopts its own educator appraisal system should have a clearly defined set of procedures for training appraisers. The district should identify the qualities appraisers must demonstrate and include appropriate proficiency checks to evaluate the performance of all educators performing appraisals under the district's locally adopted appraisal systems. The school district shall be responsible for documenting that appraisers have met training criteria established by the district. *19 TAC 244.3*

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

Appraisal System and Process

The formal appraisal of District teachers shall be in accordance with a local appraisal system developed in compliance with statutory provisions and state rules.

General Requirements

District teachers shall be appraised annually as specified by the District evaluation system established by the Superintendent and administration. The Superintendent will specify how the evaluation system will be implemented and the timeline for appraisals in an evaluation manual and DNA(REGULATION) prior to the start of each evaluation period.

Components of the appraisal system shall ensure that teachers receive appropriate guidance and feedback and, in addition to the components described in the remainder of this policy, may include, but are not limited to, a written self-assessment, formal and informal observations, classroom walk-throughs, student learning indicators, and conferences. The appraisal process shall produce a summative performance report for the teacher, acknowledged electronically by the teacher, and maintained as specified in the District's Records Management manual.

Appraisers

Appraisers shall be school-based administrators or other individuals who meet eligibility requirements, as specified in DNA(REGULATION), and who have undergone the requisite appraiser training and certification provided by the District.

Certification

Before conducting an appraisal, an appraiser shall be certified by the District. Periodic appraiser recertification and training shall be required.

Annual Training

Teachers shall participate in initial or update appraisal training annually as specified in the evaluation manual.

It is the teacher's responsibility to complete appraisal training annually. Failure to complete the appraisal training shall not impede the appraisal process.

Missed Deadlines

In the event an appraisal deadline is missed by either the teacher or the appraiser, the appraiser shall document the reason in a memorandum to the teacher and a copy shall be sent to the building principal. The appraisal process shall continue. A missed deadline shall not invalidate an appraisal document.

Application of Assessment Systems

All aspects of the appraisal systems shall be applied consistently and fairly to all employees. When an employee feels that any one of these procedures has been misapplied to them, a dispute may be filed in accordance with the Dispute Resolution Process at DGBA(LOCAL). However, unless the procedure in question was maliciously misapplied, applied in bad faith, or not applied by an appraiser, such misapplication or failure to follow the procedures

shall not prevent or be any impediment to the Board or the Superintendent changing any employee's employment status under the terms of the employment contracts, if applicable, and state and federal laws.

Complaints

Employees may present complaints regarding the evaluation and appraisal process in accordance with the District's Dispute Resolution Process. [See DGBA(LOCAL)]

Background Information

The purpose of an evaluation system is to assess teacher effectiveness and support teachers in growing their effectiveness. Central to teacher effectiveness is the quality of their instruction. How well a teacher delivers instruction and engages students in a way that maximizes understanding is the leading indicator for raising student academic performance. Additionally, effectiveness is measured by how well the students learn what they are supposed to know and be able to do.

If implemented rigorously, the Teacher Excellence System (TES) can accurately assess teacher effectiveness, especially with regard to the quality of instruction and student academic performance. Over time, rigorous evaluation systems will enable the District to support and develop high-performing teachers who will be able to narrow opportunity gaps and prepare students for a Year 2035 workplace and world.

Procedures

Teachers will be appraised annually in accordance with the TES guidebook. An appraisal will be based on a teacher's overall evaluation score, derived by adding the points earned from each TES component and any distinguished teacher review awarded.

Effective Date

This regulation is effective as of the adoption date, March 4, 2026.

Frequency

The employment policies adopted by a board must require a written evaluation at annual or more frequent intervals of each principal, supervisor, school counselor, or other full-time, certified professional employee, and nurse. *Education Code 21.203(a)*

District funds may not be used to pay an administrator who has not been appraised in the preceding 15 months. *Education Code 21.354(d)*

Principal Appraisal

A district shall appraise each principal annually. In appraising principals, a school district shall use either:

1. The appraisal system and school leadership standards and indicators developed or established by the commissioner of education; or
2. An appraisal process and performance criteria developed by the district in consultation with the district-level and campus-level committees [see BQA and BQB] and adopted by the board.

Education Code 21.3541(f), (g); 19 TAC 150.1023(a)

The commissioner's recommended principal appraisal system, the Texas Principal Evaluation and Support System (T-PESS), was developed in accordance with Education Code 21.3541.

The superintendent, with the approval of the board, may select the T-PESS. Each school district wanting to select or develop an alternative principal appraisal system must follow Education Code 21.3541, and 19 Administrative Code 150.1026 (Alternatives to the Commissioner's Recommended Principal Appraisal System).

19 TAC 150.1021(b), (c)

Notice to ESC

The superintendent shall notify the executive director of its regional education service center in writing of the school district's choice of appraisal system when using an alternative to the commissioner's recommended appraisal system and detail the components of that system by the first day of instruction for the school year in which the alternative system is used.

Each school district shall submit annually to its regional education service center a summary of the evaluation scores from the T-PESS or the district's locally adopted appraisal system, in a manner prescribed by the commissioner.

19 TAC 150.1027

Texas Principal Evaluation and Support System (T-PESS)

Each principal shall be appraised on the following standards and indicators of the T-PESS rubric that is aligned to the Texas Administrator Standards in 19 Administrative Code, Chapter 149 (Commissioner's Rules Concerning Educator Standards):

1. Standard I. Instructional Leadership, which includes four indicators;
2. Standard II. Human Capital, which includes four indicators;
3. Standard III. Executive Leadership, which includes four indicators;
4. Standard IV. School Culture, which includes five indicators; and
5. Standard V. Strategic Operations, which includes four indicators.

The evaluation of each of the standards and indicators above shall consider all data generated in the appraisal process.

Each principal shall be evaluated on the attainment and progress toward at least one goal, as referenced in 19 Administrative Code 150.1023 (Appraisals, Data Sources, and Conferences). At least one goal shall be focused on the improvement of the principal's practice, as captured in the T-PESS rubric indicators and descriptors.

If calculating a single overall summative appraisal score for principals, the rating for the attainment of goals shall count for:

1. At least 20 percent of a principal's summative score for a principal who has served at least one year in his or her role on the same campus; or
2. At least 30 percent of a principal's summative score for a principal who is in his or her first year as principal on a particular campus.

Each principal shall be evaluated on each of the 21 indicators in Standards I–V identified above and on the attainment of each goal, using the following categories:

1. Distinguished;
2. Accomplished;
3. Proficient;
4. Developing; and
5. Improvement needed.

Beginning with the 2017–18 school year, each principal appraisal shall include the campus-level academic growth or progress of the students enrolled at the principal's campus.

If calculating a single overall summative appraisal score for principals, the measure of student growth or progress shall count for:

1. At least 20 percent of a principal's summative score for a principal who has served two or more years in his or her role on the same campus;
2. At least 10 percent of a principal's summative score for a principal who has served one year in his or her role on the same campus; or
3. May not be included in calculating a single overall summative appraisal score for a principal who is in his or her first year as principal on a particular campus.

Each principal shall be evaluated on student growth or progress using one of the terms from the following categories:

1. Distinguished;
2. Accomplished;
3. Proficient;
4. Developing; or
5. Improvement needed.

19 TAC 150.1022

Appraisal Procedures

The annual principal appraisal shall include:

1. At least one appraiser-approved goal that shall be:
    a. Initially drafted in conjunction with the principal's end-of-year conference from the previous year, as applicable, revised as needed based on changes to the context of the principal's assignment at the beginning of the current school year, and submitted to the principal's appraiser; and
    b. Maintained throughout the course of the school year by the principal to track progress in the attainment of goals and the actions taken to achieve the goals;
    c. Shared with the principal's appraiser prior to the end-of-year conference; and

d. Used after the end-of-year conference in the determination of ratings for the attainment of goals;

2. A pre-evaluation conference prior to the principal submitting his or her goals to the principal's appraiser;

3. A mid-year conference to determine and discuss progress toward the attainment of goals;

4. An end-of-year conference that:

   a. Reviews data collected throughout the current school year and previous school years, if available;

   b. Examines and discusses the artifacts and evidence related to the principal's performance on the 21 indicators of T-PESS rubric and the attainment of goals;

   c. Examines and discusses evidence related to student growth or progress measures, as described in 19 Administrative Code 150.1022(f)–(h), when available; and

   d. Identifies potential goals and professional development activities for the principal for the next school year; and

5. A written summative annual appraisal report to be provided to the principal after the conclusion of the end-of-year conference.

Calendar Each school district shall establish a calendar for the appraisal of principals and provide that calendar to principals prior to the pre-evaluation conference.

Appraisal Report The written summative annual appraisal report shall be placed in the principal's personnel file by the end of the appraisal period.

Additional Documentation Any documentation collected after the end-of-year conference but before the end of the contract term during one school year may be considered as part of the appraisal of a principal. If the documentation affects the principal's evaluation in any indicator, the attainment of goals, or a measure of student growth or progress, another summative report shall be developed to inform the principal of the changes prior to the end of the contract term.

19 TAC 150.1023(b)–(e)

Appraiser Qualifications The principal appraisal process requires at least one certified appraiser. Before conducting an appraisal, an appraiser must be certified by having satisfactorily completed the state-approved T-PESS. Periodic recertification and training may be required. *19 TAC 150.1024*

Orientation

A district shall ensure that a principal is provided with an orientation of the T-PESS either prior to or in conjunction with the pre-evaluation conference when:

1. The principal is new to the district;
2. The principal has never been appraised under the T-PESS; or
3. District policy regarding principal appraisal has changed since the last time the principal was provided with an orientation to the T-PESS.

The principal orientation shall include all state and local appraisal policies and the local appraisal calendar.

19 TAC 150.1025

Alternatives to T-PESS

A district that does not choose to use the T-PESS must develop its own principal appraisal system supported by locally adopted policy and procedures; developed in consultation with the district-level and campus-level committees established under Education Code 11.251; and adopted by the board. *Education Code 21.3541; 19 TAC 150.1026*

Note: The standards, indicators, knowledge, and skills to be used to align with the training, appraisal, and professional development of principals are outlined in 19 Administrative Code 149.2001.

Appraisal of Campus Administrators Other Than Principals

A district shall appraise each campus administrator, other than a principal, annually using either:

1. The commissioner's recommended appraisal process and performance criteria; or
2. An appraisal process and performance criteria developed by the district in consultation with the district- and campus-level committees and adopted by the board.

Education Code 21.354(c)

A district may use the T-PESS to appraise campus administrators other than principals provided the school district makes appropriate modifications to ensure that the T-PESS rubric and components fit the job descriptions of the campus administrators other than principals evaluated with the T-PESS. A district using T-PESS for administrators other than principals shall evaluate administrators on the attainment and progress toward at least one goal, as referenced in 19 Administrative Code 150.1023 (Appraisals, Data Sources, and

Conferences). At least one goal shall be focused on the improvement of the administrator's practice, as captured in the T-PESS rubric indicators and descriptors.

Each school district wanting to select or develop a local appraisal system for campus administrators other than principals must use an appraisal process and performance criteria developed in consultation with the district- and campus-level committees established under Education Code 11.251; and adopted by the board.

Education Code 21.354(c)(2); 19 TAC 150.1028, 244.2(c)

Appraisers

A district using T-PESS for administrators other than principals or that locally develops and adopts its own educator appraisal system should have a clearly defined set of procedures for training appraisers. The school district should identify the qualities appraisers must demonstrate and include appropriate proficiency checks to evaluate the performance of all educators performing appraisals under the district's adopted appraisal systems. The school district shall be responsible for documenting that appraisers have met training criteria established by the district. *19 TAC 244.2(c), .3*

School Counselors

The commissioner shall develop and periodically update an evaluation form for use by districts in evaluating school counselors. *Education Code 21.356*

Confidentiality

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

General Principles

School leaders and other professional employees shall participate in the appraisal process on an annual basis as specified by the District evaluation system established by the Superintendent and administration. The Superintendent will specify how the evaluation system will be implemented and the timeline for appraisals in the evaluation manual and DNB(REGULATION) prior to the start of each evaluation period.

Employment Decisions

When relevant to the decision, written evaluations of a professional employee's performance, as documented to date, and any other information the administration determines to be appropriate shall be considered in decisions affecting contract status.

Exception

Written evaluations and other evaluative information need not be considered prior to a decision to terminate a probationary contract or a certified administrative performance contract at the end of the contract term.

Definition

Other professional employees are defined as school leaders, including principals and assistant principals.

School Leader Appraisal Criteria

School leader appraisals shall include, but not be limited to, the following criteria:

- Student performance;
- School performance; and
- Teacher Leader effectiveness.

Performance Review of School Leaders

The following requirements shall be followed for the School Leader Appraisal System.

Training

School leaders shall complete initial or update training regarding the appraisal process and procedures annually.

It is the school leader's responsibility to complete appraisal training annually. Failure to complete the appraisal training shall not impede the appraisal process.

Missed Deadlines

In the event an appraisal deadline is missed by either the school leader or the appraiser, the appraiser shall document the reason in a memorandum to the school leader and a copy shall be sent to the school leader's supervisor. The appraisal process shall continue. A missed deadline shall not invalidate an appraisal document.

Documentation and Records

Official appraisal records shall be maintained throughout a person's employment with the District as outlined in the District's Records Management Manuals.

Application of Assessment Systems

All aspects of the appraisal systems shall be applied consistently and fairly to all employees. When an employee feels that any one of these procedures has been misapplied to them, a dispute may be filed in accordance with the Dispute Resolution Process at DGBA(LOCAL). However, unless the procedure in question was maliciously misapplied, applied in bad faith, or not applied by an appraiser, such misapplication or failure to follow the procedures shall not prevent or be any impediment to the Board or the Superintendent changing any employee's employment status under the terms of the employment contracts, if applicable, and state and federal laws.

Complaints

Employees may present complaints regarding the evaluation and appraisal process in accordance with the District's Dispute Resolution Process. [See DGBA(LOCAL)]

Nondiscrimination

A district shall provide equal opportunities to all individuals within its jurisdiction or geographic boundaries. *Education Code 1.002(a)*

No officer or employee of a district shall, when acting or purporting to act in an official capacity, refuse to permit any student to participate in any school program because of the student's race, religion, color, sex, or national origin. *Civ. Prac. & Rem. Code 106.001*

A district may not deny services to any individual eligible to participate in its special education program, but it shall provide individuals with disabilities special educational services as authorized by law. *Education Code 1.002(b)*

Federal Funding Recipients

No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination by any district that receives federal financial assistance, on the basis of any of the following protected characteristics:

1. Sex.
2. Race, color, or national origin.
3. Disability, or relationship or association with an individual with a disability. [See EHB, EHBA series, and GA]
4. Age.

20 U.S.C. 1681 (Title IX); 42 U.S.C. 2000d (Title VI); 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act); 29 U.S.C. 794 (Section 504); 42 U.S.C. 12132 (Americans with Disabilities Act [ADA]); 42 U.S.C. 6101 et. seq. (Age Discrimination Act of 1975)

Sexual Harassment

Sexual harassment of students in an education program or activity is discrimination on the basis of sex under Title IX. *Franklin v. Gwinnett Cnty. Pub. Sch., 503 U.S. 60 (1992)*

A district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX. *34 C.F.R. 106.45(a)*

[See also DIA and FFH]

Grievance Procedures

A district must adopt and publish grievance procedures for prompt and equitable resolution of student complaints alleging any action that would be prohibited by these provisions. *34 C.F.R. 106.8 (Title IX), 104.7(b) (Section 504)* [See FFH]

Retaliation

A district shall not coerce, intimidate, threaten, retaliate or discriminate against, or interfere with any person who attempts to assert a right protected by the above laws or cooperates with investigation and enforcement proceedings under these laws. *34 C.F.R.*

100.7(e) (Title VI), 104.61 (Section 504), 106.71 (Title IX) [See FFH]

Students with Learning Difficulties

The Texas Education Agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Education Code 29.004 or for aids, accommodations, or services under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794). Each school year, a district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means. *Education Code 26.0081(c)*

Disability Discrimination

ADA

Under the Americans with Disabilities Act (ADA), no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a district, or be subjected to discrimination by the district. *42 U.S.C. 12132; 28 C.F.R. 35.130*

Section 504

Under Section 504 of the Rehabilitation Act, no otherwise qualified individual with a disability shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. *29 U.S.C. 794(a)*

Designation of Responsible Employee

A district shall designate at least one employee to coordinate its efforts to comply with Section 504 and the ADA. The district shall make available to all interested individuals the name, office address, and telephone number of the employee(s) so designated. *34 C.F.R. 104.7(a), 28 C.F.R. 35.107*

Definitions

Student with a Disability

A "student with a disability" is one who has a physical or mental impairment that substantially limits one or more of the student's major life activities, has a record of having such an impairment, or is being regarded as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a dis-

ability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

A student meets the requirement of being "regarded as" having an impairment if the student establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of 6 months or less.

29 U.S.C. 705(20)(B), 42 U.S.C. 12102(1), (3)–(4)

Qualified Individual with a Disability — The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a district. *42 U.S.C. 12131(2)*

Major Life Activities — "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. "Major life activity" also includes the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *42 U.S.C. 12102(2)*

Reasonable Modification — A district shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the district can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. *28 C.F.R. 35.130(b)(7)*

Direct Threat — "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided below. *28 C.F.R. 35.104*

The ADA does not require a district to permit an individual to participate in or benefit from the services, programs, or activities of that district when that individual poses a direct threat to the health or safety of others.

In determining whether an individual poses a direct threat to the health or safety of others, a district must make an individualized assessment, based on reasonable judgment that relies on current

medical knowledge or on the best available objective evidence, to ascertain:

1. The nature, duration, and severity of the risk;
2. The probability that the potential injury will actually occur; and
3. Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

28 C.F.R. 35.139

Free Appropriate Public Education (FAPE)

A district shall provide a free appropriate public education to each qualified student with a disability within the district's jurisdiction, regardless of the nature or severity of the student's disability.

A student with a disability is "qualified" if he or she is between the ages of three and 21, inclusive. *20 U.S.C. 1412(a)(1); 34 C.F.R. 104.3(l)(2)*

An appropriate education is the provision of regular or special education and related services that are:

1. Designed to meet the student's individual educational needs as adequately as the needs of students who do not have disabilities are met; and
2. Based on adherence to procedures that satisfy federal requirements for educational setting, evaluation and placement, and procedural safeguards, as set forth below.

34 C.F.R. 104.33(b)

Implementation of an individualized education program (IEP) under IDEA is one means for providing FAPE. *34 C.F.R. 104.33(b)(2)*

Note: See EHBA series for policies regarding the provision of special education to students with disabilities under IDEA who require special education in order to benefit from a free appropriate public education.

Educational Setting

A district shall place a student with a disability in the regular educational environment, unless the district demonstrates that education in the regular environment with the use of supplemental aids and services cannot be achieved satisfactorily. *34 C.F.R. 104.34(a)*

In providing or arranging for nonacademic and extracurricular services and activities, a district shall ensure that a student with a disability participates with students who do not have disabilities to the

maximum extent appropriate to the needs of the student with a disability. *34 C.F.R. 104.34(b), 104.37*

Evaluation and Placement

A district shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

Evaluation Procedures

A district shall establish standards and procedures for the evaluation and placement which ensure that:

1. Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
2. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
3. Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Placement Procedures

In interpreting evaluation data and in making placement decisions, a district shall:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior;
2. Establish procedures to ensure that information obtained from all such sources is documented and carefully considered;
3. Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
4. Ensure that the placement decision is made in conformity with 34 C.F.R. 104.34.

Reevaluation

A district shall establish procedures for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act [now IDEA] is one means of meeting this requirement.

34 C.F.R. 104.35

Military Dependents

In compliance with the requirements of Section 504, and with Title II of the Americans with Disabilities Act (42 U.S.C. Sections 12131–12165), the district shall make reasonable accommodations and modifications to address the needs of incoming military dependents with disabilities, subject to an existing Section 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the district from performing subsequent evaluations to ensure appropriate placement of the student. *Education Code 162.002 art. V, § C* [See FDD]

Procedural Safeguards

A district shall establish a system of procedural safeguards with respect to the identification, evaluation, and educational placement of persons who need or are believed to need special instruction or related services.

The system shall include notice, an opportunity for the student's parent or guardian to examine relevant records, an impartial hearing with the opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of IDEA is one means of meeting this requirement. *34 C.F.R. 104.36*

Children Who Are Homeless

A district shall adopt policies and practices to ensure that homeless children are not stigmatized or segregated on the basis of their homeless status. [See FDC]

Liaison

A district shall designate an appropriate staff person, able to carry out the required duties, as the district liaison for homeless children. A district shall inform school personnel, service providers, advocates working with homeless families, parents and guardians of homeless children, and homeless children of the duties of the liaison. [See FFC]

42 U.S.C. 11432(g)(1)(J)(i), (ii), (g)(6)(B)

Religious Freedom

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

Adverse Action Prohibited	Notwithstanding any other law, a district may not take any adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization. *Gov't Code 2400.002* [See GA]
Discrimination on the Basis of Sex	
Title IX	No person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination by any district receiving federal financial assistance. *20 U.S.C. 1681(a)* [See FFH for information regarding Title IX coordinator designation, policy notification, and complaint procedures.] A district shall not provide any course or otherwise carry out any of its educational programs or activities separately on the basis of sex, or require or refuse participation therein on the basis of sex, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses. *34 C.F.R. 106.34* [See FFH for information on sexual harassment that may constitute discrimination on the basis of sex under Title IX.]
Separate Facilities	A district may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for one sex shall be comparable to the facilities provided for the other sex. *34 C.F.R. 106.33*
Human Sexuality Classes	Portions of classes in elementary and secondary school that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.
Vocal Music Activities	A district may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. *34 C.F.R. 106.34*
Single-Sex Programs	A district shall not, on the basis of sex, exclude any student from admission to an institution of vocational education or any other school or educational unit operated by the district. *34 C.F.R. 106.35*
Pregnancy and Marital Status	A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex. *34 C.F.R. 106.40* [See FND]
Physical Education Classes	A district may group students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

Skills Assessment — Where use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, a district shall use appropriate standards that do not have such effect.

Contact Sports — A district may separate students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

34 C.F.R. 106.34, .43

Athletic Programs — A district shall not discriminate, on the basis of sex, in interscholastic or intramural athletics or provide any such athletics separately on such basis.

Single-Sex Teams — A district may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but not for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.

Equal Athletic Opportunities — A district that operates or sponsors interscholastic or intramural athletics shall provide equal athletic opportunity for members of both sexes. The following factors shall be considered in determining whether a district provides equal athletic opportunities:

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
2. Provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms and practice and competitive facilities;
8. Provision of medical and training facilities and services;
9. Provision of housing and dining facilities and services; and
10. Publicity.

34 C.F.R. 106.41

Note: The following provisions address equal educational opportunity for all students in accordance with law. For provisions addressing discrimination, harassment, and retaliation involving District students, see FFH.

Title IX Coordinator

The District designates and authorizes the Title IX coordinator for students to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended. [See FB(EXHIBIT)]

ADA / Section 504 Coordinator

The District designates and authorizes the ADA/Section 504 coordinator for students 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 ("Section 504"), as amended. [See FB(EXHIBIT)]

Superintendent

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

Equal Educational Opportunity

General Education

The District shall provide necessary services and supports to provide students equal access to educational opportunities. [See EHBC] Certain instructional or other accommodations, including on state-mandated assessments, may be made when necessary, when allowable, and when these accommodations do not modify the rigor or content expectations of a subject, course, or assessment. [See EKB]

Additional Services and Supports

If the District has reason to believe that a student has a disability that may require additional services and supports in order for the student to receive an appropriate education as this term is defined by law, Section 504 and/or the Individuals with Disabilities Education Act (IDEA) shall govern the evaluation, services, and supports provided by the District. [See also EHBA series]

[For information regarding dyslexia and related disorders, see EHB.]

Note: The following provisions address the District's compliance efforts and system of procedural safeguards as required by federal regulations for a student with a disability as defined by Section 504. A report of discrimination or harassment based on a student's disability shall be made in accordance with FFH.

Section 504

Committees

The District shall form Section 504 committees as necessary. The Section 504 coordinator and members of each Section 504 committee shall receive training in the procedures and requirements for

	identifying and providing educational and related services and supports to a student who has a disability that results in a substantial limitation of a major life activity. Each Section 504 committee shall be composed of a group of persons knowledgeable about the student, the meaning of the evaluation data, placement options, and the legal requirements regarding least restrictive environment and comparable facilities for students with disabilities.
Referrals	If a teacher, school counselor, administrator, or other District employee has reason to believe that a student may have a disability as defined by Section 504, the District shall evaluate the student. A student may also be referred for evaluation by the student's parent.
Notice and Consent	The District shall seek written parental consent prior to conducting a formal evaluation. Ordinary observations in the classroom or other school setting shall not require prior parental consent.
Evaluation and Placement	The results of an evaluation shall be considered before any action is taken to place a student with a disability or make a significant change in placement in an instructional program. The Superintendent shall ensure that the District's procedures for tests and other evaluation materials comply with the minimum requirements of law. In interpreting evaluation data and when making decisions related to necessary services and supports, each Section 504 committee shall carefully consider and document information from a variety of sources in accordance with law.
Review and Reevaluation Procedure	To address the periodic reevaluation requirement of law, the District shall adhere to the reevaluation timelines in the IDEA regulations. A parent, teacher, or other District employee may request a review of a student's services and supports at any time, but a formal reevaluation shall generally occur no more frequently than once a year.
Examining Records	A parent shall make any request to review his or her child's education records to the campus principal or other identified custodian of records. [See FL]
Right to Impartial Hearing	A parent shall be given written notice of the due process right to an impartial hearing if the parent has a concern or complaint about the District's actions regarding the identification, evaluation, or educational placement of a student with a disability. The impartial hearing shall be conducted by a person who is knowledgeable about Section 504 issues and who is not employed by the District or related to a member of the Board in a degree that would be prohibited under the nepotism statute [see DBE]. The impartial hearing officer is

	not required to be an attorney. The District and the parent shall be entitled to legal representation at the impartial hearing.
Records Retention	Records specific to identification, evaluation, and placement as these pertain to Section 504 shall be retained by the District in accordance with law and the District's local records control schedules. [See CPC]
Effective Date	This policy shall be effective as of the adoption date, August 14, 2020.

Assistive Technology Devices and Services

1. For the purposes of this regulation, the following definitions will apply:

Assistive Technology Device

a. Assistive technology (AT) device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device. See References (a) and (b).

Assistive Technology Service

b. An AT service is any service that directly assists a child with a disability in the selection, acquisition, or use of an AT device. See Section 300.6 of Reference (a).

Assistive Technology Team

c. An AT team can be composed of a central AT team member, teacher, speech pathologist, occupational or physical therapist, the student's parent or guardian, the student, and or other pertinent staff members. The role of the team is to obtain information through the approved assessment process to determine the student's needs, his or her environment, and the tasks in which the student is involved. The team uses the results to identify appropriate devices and or services that will enhance the student's functioning level. See Reference (c).

Guidelines

2. The need for assistive technology must be considered for each student receiving special education services. Guidelines regarding the request for AT services and devices and the use and care of AT devices are as follows:

Purchase of Devices and Central Services

a. Using assessment results and following recommendations from the AT team, the admission, review, and dismissal (ARD) committee may recommend the purchase or availability of technology devices and services for a specific student. Such services and devices are provided by the Houston Independent School District (HISD) at no charge to the parents. See Sections 300.6 and 300.105 of Reference (a).

Staff members assigned to the Special Education Resource System (SERS) centers process all requests from the AT team for the purchase of AT devices. When the AT staff member receives the device, the AT team contacts the student's teacher and parent for training on how to use the device and to explain the SERS checkout procedures.

Use of Devices	b.	When the ARD committee determines that an AT device is needed by the student to provide him or her with a free, appropriate public education, the District makes the recommended device available for use in the student's school, home, or other settings as educationally necessary. See Sections 300.6 and 300.105 of Reference (a).
Repair of Devices	c.	The student's family and teachers must maintain reasonable care of the assigned device. When a device needs to be repaired, the general or special education teacher contacts the central AT team to make repair arrangements. The central AT team makes every effort to ensure the repairs are done in a timely fashion so that the student is not without the device for a prolonged period of time. See References (d) and (e).
Withdrawal of Student	d.	When a student withdraws from the District, the adaptive equipment assigned to the student may be purchased by the receiving school district or the parent. The purchase price will be established by Special Education. If the equipment is not purchased, it remains the property of HISD and must be returned to the AT team upon the student's withdrawal from HISD. See References (b) and (c).

Consultation

3. This regulation does not require consultation.

Maintenance Responsibility

4. The manager, Administration and Compliance, Special Education, is responsible for maintenance of this regulation.

References:

(a) Individuals with Disabilities Education Act, 2004

(b) Texas Education Code §30.0015 Transfer of Assistive Technology Devices

(c) Assistive Technology Guidelines

(d) Special Education Operating Guidelines

(e) Special Education Resource System Guidelines

Effective Communication

Consistent with Title II, the District is committed to taking appropriate steps to ensure that its communications with applicants, students, members of the public, and companions with hearing, vision, speech, or other sensory impairments are as effective as communications with others. In furtherance of that requirement, the District will furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, services, programs, and activities of the District.

Qualified Individual with a Disability

In order to be an individual protected by Title II, the individual must be a "qualified" individual with a disability. Under the Americans with Disabilities Act (ADA), including Title II, and under Section 504 of the Rehabilitation Act, a disability is:

1. A physical or mental impairment that substantially limits a major life activity;
2. A record of such an impairment; or
3. Being regarded as having such an impairment.

The definition includes individuals eligible for special education under the Individuals with Disabilities Education Act (IDEA) and individuals eligible for accommodations under Section 504 of the Rehabilitation Act. It also includes individuals who meet the definition, but who have not been determined eligible or who may have refused to consent for evaluation or for services under IDEA or under Section 504, but who meet the definition of a qualified individual with a disability.

Primary Consideration

When an auxiliary aid or service is required to assist with communication, the District will provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice and must give primary consideration to the choice expressed by the individual. "Primary consideration" means that the public entity must honor the choice, unless it can demonstrate that another equally effective means of communication is available, or that use of the means chosen would result in a fundamental alteration in the service, program, or activity or in undue financial and administrative burdens.

Determination of Fundamental Alteration or Undue Financial or Administrative Burden

The District has the burden of proving that providing a requested auxiliary aid or service would result in a fundamental alteration or an undue burden, and the Superintendent or designee (i.e., another school official with authority to make budgetary or spending decisions) (for purposes of this policy, the District Section 504/ADA coordinator is the designee) must make the determination that a particular auxiliary aid or service would result in a fundamental al-

teration in the nature of the service, program, or activity or result in undue financial or administration burden. The determination the requested service would result in an undue financial burden must be determined after considering all resources available for use by the District in funding and operation of the service, program, or activity. Such a determination must be accompanied by the decision maker's written statement of the reasons for concluding that the requested auxiliary aid or service would cause such alteration or burdens.

Effectiveness

In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy, support independence of the individual with a disability and afford an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by the District.

Use of IDEA Funding

IDEA provides that federal special education funds must be used only in accordance with the applicable provisions of the IDEA and to pay the excess costs of providing special education and related services to children with disabilities. Accordingly, IDEA funds may be used only to pay for auxiliary aids and services under Title II that also are required to be provided under the IDEA, such as assistive technology or interpreter services that are included in the student's IEP. If a child receives auxiliary aids and services under Title II that are not included in the child's IEP, IDEA funds may not be used to pay for those services.

Type of Auxiliary Aid or Service

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. For example, will the communication with a deaf student be fairly simple so that handwritten or typed notes would suffice, or is the information being exchanged important, somewhat complex, technical, extensive, or emotionally charged, in which case, a qualified interpreter may be necessary?

Public Requests for Auxiliary Aids and Services

Public requests for an auxiliary aid or service for an individual with a hearing, vision, speech, or other sensory impairment will be directed to the District Information Center, if the service or activity is at a main District office. If the event or meeting is at a school, the request will be made to the principal of the school.

Student Requests for Auxiliary Aids and Services

Student requests for specific auxiliary aids or services to assist in effective communication will be made to the District Section 504/ADA coordinator as follows:

Schedule Requested Service	1. The District Section 504/ADA coordinator will make reasonable efforts to immediately schedule the requested service upon receiving the request.
Consultation Regarding Other Auxiliary Aids or Services	2. In conjunction with scheduling the service and as soon as practicable, the District Section 504/ADA coordinator will consult with the Senior Manager responsible for Auditory Impairment and Visual Impairment (AI/VI) Services, Speech Services, or Assistive Technology, depending upon the nature of the communication need and of the auxiliary aid or service requested. The purpose of the consultation with the Senior Manager is to determine whether the service requested will continue to be provided; whether there is another equally effective means of communication that still affords the individual with the disability an equal opportunity to participate in and benefit from the services, program, or activities; or whether the chosen method constitutes a fundamental alteration in the nature of the program, along with the reasons why, in which case the District still has the obligation to provide, to the maximum extent possible, an effective auxiliary aid or service. In the event the parent or adult student refuses to consent to any requested evaluation, the decision regarding effective communication and whether there is another equally effective means will be made using the best information available.

Students Eligible under IDEA

In situations involving Title II effective communication requests for students eligible under IDEA, the District Section 504/ADA coordinator will refer the student for a related services or assistive technology evaluation, as appropriate, based upon the nature of the communication assistance or auxiliary aid requested. In addition to the recommendations made as a part of the evaluation, the evaluation will make individualized recommendations, give primary consideration to the parent or adult student's request for an auxiliary aid or service and make recommendations regarding appropriateness and whether there may be alternate auxiliary aids or services that may be equally or more effective. The results of the evaluation will then be considered by an ARD/IEP committee. The ARD/IEP committee will also make a determination in cases where the recommended aid or service differs from that requested by the parent or adult student of whether the recommended service is equally or more effective in providing the individual with an equal opportunity to participate in and enjoy the benefits of services, programs, and activities of the District. Pending completion of the evaluations and the holding of an ARD/IEP committee meeting to consider the evaluation, the procedures below will be followed to address the assistance or auxiliary aid requested during the interim:

Schedule Requested Service

1. The District Section 504/ADA coordinator will make reasonable efforts to immediately schedule the requested service upon receiving the request.

Consultation Regarding Other Auxiliary Aids or Services

2. In conjunction with scheduling the service and as soon as practicable, the District Section 504/ADA coordinator will consult with the senior manager responsible for AI/VI Services, Speech Services, or Assistive Technology, depending on the nature of the communication need and of the auxiliary aid or service requested. The purpose of the consultation with the senior manager is to determine whether the service requested will continue to be provided; whether there is another equally effective means of communication that still affords the individual with the disability an equal opportunity to participate in and benefit from the services, program, or activities; or whether the chosen method constitutes a fundamental alteration in the nature of the program, along with the reasons why, in which case the District still has the obligation to provide, to the maximum extent possible, an effective auxiliary aid or service. In the event the parent or adult student refuses to consent to any requested evaluation, the decision regarding effective communication and whether there is another equally effective means will be made using the best information available, and until the determination is made, the District will give primary consideration to the request of the student or parent.

Examples of Effective Communication

Examples of effective communication include:

- In a lunchroom or restaurant, reading the menu to a person who is blind allows that person to decide what dish to order.
- In a retail setting, pointing to product information or writing notes back and forth to answer simple questions about a product may allow a person who is deaf to decide whether to purchase the product.

Other solutions may be needed where the information being communicated is more extensive or complex. For example:

- In a law firm, providing an accessible electronic copy of a legal document that is being drafted for a client who is blind allows the client to read the draft at home using a computer screen-reading program.
- In a doctor’s office, an interpreter generally will be needed for taking the medical history of a patient who uses sign language or for discussing a serious diagnosis and its treatment options.

Examples Underlying Primary Consideration Determination

Examples underlying primary consideration determination include:

- If a high school student was deaf at birth or lost his or her hearing before learning language, that person may use American Sign Language (ASL) as his or her primary form of communication and may be uncomfortable or not proficient with other forms of communication.
- A high school student who lost his or her hearing later in life and who uses a cochlear implant may not be as familiar with sign language and may feel most comfortable and proficient with an oral interpreter or with the use of a computer or other technology.
- A young student who is nonverbal and is fluent in ASL but cannot read yet may not be able to use a computer with written text and may be most comfortable and proficient communicating with a sign language interpreter.
- If a blind student is not able to read Braille, then provision of written material in Braille would not be accessible for that student. If homework assignments are available online, then the online program used by the school must be accessible to students who are blind.
- For a student with limited speech who does not yet read, a computer that writes words would not be accessible for that student. Instead, a device that uses pictures to communicate words, thoughts, and questions may be appropriate.

Consultation

This regulation does not require consultation.

Maintenance Responsibility

The General Counsel, Legal Services, is responsible for maintenance of this regulation.

Effective Date

This regulation will be effective as of the adoption date, December 21, 2017.

Title IX Coordinator

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

Name: Casteadel Webb Jr.

Position: Title IX Coordinator

Address: 4400 W. 18th Street, Houston, TX 77092

Email: Title IX coordinator (TitleIXComplaints@houstonisd.org)

Telephone: (713) 556-7333

ADA/Section 504 Coordinator

The District designates and authorizes the following person as the ADA/Section 504 coordinator to be responsible for coordinating the District's efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, for students:

Name: Michelle Burke

Position: Director, Response to Intervention

Address: 4400 W. 18th Street, Houston, TX 77092

Email: ADA/Section 504 coordinator (hisdinterventionsdepartment@houstonisd.org)

Telephone: (713) 556-7122

Threat Assessment

Definitions

"Harmful, threatening, or violent behavior" includes behaviors, such as verbal threats, threats of self harm, bullying, cyberbullying, fighting, the use or possession of a weapon, sexual assault, sexual harassment, dating violence, stalking, or assault, by a student that could result in:

1. Specific interventions, including mental health or behavioral supports;
2. In-school suspension;
3. Out-of-school suspension; or
4. The student's expulsion or removal to a disciplinary alternative education program (DAEP) or a juvenile justice alternative education program (JJAEP).

"Team" means a threat assessment and safe and supportive school team established by the board under Education Code 37.115.

Education Code 37.115(a)

Threat Assessment and Safe and Supportive Schools Team

The board shall establish a threat assessment and safe and supportive school team to serve at each campus of the district and shall adopt policies and procedures for the teams.

The team is responsible for developing and implementing the safe and supportive school program in compliance with Texas Education Agency (TEA) rules at the district campus served by the team.

The policies and procedures adopted under Education Code 37.115 must:

1. Be consistent with the model policies and procedures developed by the Texas School Safety Center (TxSSC) [see Education Code 37.220];
2. Require each team to complete training provided by the TxSSC or a regional education service center (ESC) regarding evidence-based threat assessment programs;
3. Require each team established under this section to report the required information regarding the team's activities to TEA [see Reporting to TEA, below];
4. Require each district campus to establish a clear procedure for a student to report concerning behavior exhibited by another student for assessment by the team or other appropriate school employee;

5. Provide for:

   a. A district employee who reports a potential threat to a team to elect for the employee's identity to be confidential and not subject to disclosure Government Code Chapter 552 (Public Information Act), except as necessary for the team, the district, or law enforcement to investigate the potential threat; and

   b. The district to maintain a record of the identity of a district employee who elects for the employee's identity to be confidential; and

6. Require that, as soon as safe and practicable after an administrator or team for a district campus receives information regarding a threat made against that campus, including threats made through social media, the administrator or team shall immediately provide notice to each member of the teaching staff, including teacher's aides, who may be directly affected by the threat that must include a statement of the existence of the threat, the nature of the threat, and any other pertinent details to ensure student and staff safety.

Membership

General Team Composition

The superintendent shall ensure, to the greatest extent practicable, that the members appointed to each team have expertise in counseling, behavior management, mental health and substance use, classroom instruction, special education, school administration, school safety and security, emergency management, and law enforcement. A team may serve more than one campus of a district, provided that each district campus is assigned a team, and in serving a particular campus, the team includes the person designated to serve as the campus behavior coordinator for that campus.

Assessment of Student in Special Education Program

If a student in a special education program under Education Code Chapter 29, Subchapter A, is the subject of a threat assessment, the team conducting the assessment must include at least one person who has specific knowledge of the student's disability and the disability's manifestations and who is:

1. A special education teacher who provides instruction to the student;

2. A behavior analyst licensed under Occupations Code Chapter 506;

3. A clinical or master social worker licensed under Occupations Code Chapter 505; or

4. A specialist in school psychology licensed under Occupations Code Chapter 501.

If a student in a special education program under Education Code Chapter 29, Subchapter A, is the subject of a threat assessment, the team conducting the assessment must include a person who has knowledge of student disabilities and how student disabilities manifest and may include:

1. An educational diagnostician;
2. A behavior specialist;
3. A special education teacher assigned to the student;
4. A licensed behavior analyst;
5. A licensed clinical or licensed master social worker; or
6. A licensed specialist in school psychology.

Oversight Committee

The superintendent may establish a committee, or assign to an existing committee established by the district, the duty to oversee the operations of teams established for the district. A committee with oversight responsibility must include members with expertise in human resources, education, special education, counseling, behavior management, school administration, mental health and substance use, school safety and security, emergency management, and law enforcement.

Team Duties

Each team shall:

1. Conduct a threat assessment that includes assessing and reporting individuals who make threats of violence or exhibit harmful, threatening, or violent behavior in accordance with district policies and procedures; and gathering and analyzing data to determine the level of risk and appropriate intervention, including:
    a. Referring a student for mental health assessment; and
    b. Implementing an escalation procedure, if appropriate, based on the team's assessment, in accordance with district policy;
2. Provide guidance to students and school employees on recognizing harmful, threatening, or violent behavior that may pose a threat to the community, school, or individual; and
3. Support the district in implementing the district's multihazard emergency operations plan [see CKC].

Use of Sentinel Assessment Instrument, Manual, and Field Guide

Effective August 1, 2025, when conducting a threat assessment, members of a threat assessment team shall utilize the threat assessment instrument, manual, and field guide in Sentinel [see CKA], which are consistent with the model policies published by the TxSSC. *19 TAC 103.1213(e)(1)(A)*

Parental Participation

Before a team may conduct a threat assessment of a student, the team must notify the parent of or person standing in parental relation to the student regarding the assessment. In conducting the assessment, the team shall provide an opportunity for the parent or person to participate in the assessment, either in person or remotely, and to submit to the team information regarding the student.

After completing a threat assessment of a student, the team shall provide to the parent of or person standing in parental relation to the student the team's findings and conclusions regarding the student.

Consent for Mental Health-Care Service

A team may not provide a mental health-care service to a student who is under 18 years of age unless the team obtains written consent from the parent of or the person standing in parental relation to the student before providing the mental health-care service. The consent must be submitted on a form developed by the district that complies with all applicable state and federal law. The student's parent or person standing in parental relation to the student may give consent for a student to receive ongoing services or may limit consent to one or more services provided on a single occasion.

Education Code 37.115(c)-(g)

Determination of Risk

On determination that a student or other individual poses a serious risk of violence to self or others, a team shall immediately report the team's determination to the superintendent, and if the individual is a student, immediately attempt to inform the parent or person standing in parental relation to the student. These requirements do not prevent an employee of the school from acting immediately to prevent an imminent threat or respond to an emergency.

A team identifying a student at risk of suicide shall act in accordance with the district's suicide prevention program. If the student at risk of suicide also makes a threat of violence to others, the team shall conduct a threat assessment in addition to actions taken in accordance with the district's suicide prevention program.

A team identifying a student using or possessing tobacco, drugs, or alcohol shall act in accordance with district policies and procedures related to substance use prevention and intervention.

Education Code 37.115(h)-(j)

Recordkeeping

Materials and information provided to or produced by a team during a threat assessment of a student under this provision must be maintained in the student's school record until the student's 24th birthday. *Education Code 37.115(j-1)*

[For information regarding the transfer of threat assessment records between school districts, see FD and FDA.]

Reporting to TEA

A team must report to TEA in accordance with TEA-developed guidelines the following information regarding the team's activities and other information for each campus the team serves:

1. The occupation of each person appointed to the team;
2. The number of threats and description of the type of threats reported to the team;
3. The outcome of each assessment made by the team, including:
    a. Any disciplinary action taken, including a change in school placement;
    b. Any action taken by law enforcement; or
    c. A referral to or change in counseling, mental health, special education, or other services;
4. The total number, disaggregated by student gender, race, and status as receiving special education services, being at risk of dropping out of school, being in foster care, experiencing homelessness, being a dependent of military personnel, being pregnant or a parent, having limited English proficiency, or being a migratory child, of, in connection with an assessment or reported threat by the team:
    a. Citations issued for Class C misdemeanor offenses;
    b. Arrests;
    c. Incidents of uses of restraint;
    d. Changes in school placement, including placement in a JJAEP or DAEP;
    e. Referrals to or changes in counseling, mental health, special education, or other services;
    f. Placements in in-school suspension or out-of-school suspension and incidents of expulsion;
    g. Unexcused absences of 15 or more days during the school year; and

h. Referrals to juvenile court for truancy; and

5. The number and percentage of school personnel trained in:

   a. A best-practices program or research-based practice under Education Code 38.351 [see FFEB], including the number and percentage of school personnel trained in suicide prevention or grief and trauma-informed practices;

   b. Mental health or psychological first aid for schools;

   c. Training relating to the safe and supportive school program; or

   d. Any other program relating to safety identified by the commissioner.

Education Code 37.115(k)

Threat Assessment and Safe and Supportive Team

In compliance with law, the Superintendent shall ensure that a multidisciplinary threat assessment and safe and supportive team is established to serve each campus. The Superintendent shall appoint team members. The team shall be responsible for developing and implementing a safe and supportive school program at each campus served by the team and shall support the District in implementing its multi-hazard emergency operations plan. This multi-hazard emergency operations plan shall include supports such as mental health intervention and suicide prevention for students, including training for appropriate District staff on early warning signs and the possible need for intervention.

Training

Each team shall complete training provided by an approved provider on evidence-based threat assessment programs.

Student Reports

Each campus shall establish a clear procedure for a student to report concerning behavior exhibited by another student for assessment by the team or other appropriate District employee.

Employee Confidentiality

A District employee who reports a potential threat to the team may request that their identity be kept confidential such that it will not be subject to disclosure under the state's public information law. While the employee will be required to identify themselves to the team when making the report, the employee's identity shall only be revealed when necessary for the team, the District, or law enforcement to investigate the reported threat and/or as otherwise required by lawful subpoena, valid court order, or other relevant and applicable law.

The District shall maintain a record of the identity of a District employee who elects for the employee's identity to remain confidential.

Notification to Teaching Staff of Threat

As soon as safe and practicable after an administrator or team receives information regarding a threat against a campus, including a threat made through social media, the appropriate administrator or the team shall immediately provide to each member of the teaching staff, including teacher aides, who may be directly affected by the threat a statement containing the following information:

1. The existence of the threat;
2. The nature of the threat; and
3. Any other pertinent detail to ensure student and staff safety.

The Superintendent shall develop administrative regulations to ensure that the required notice is provided to the teaching staff in accordance with law. The administrative regulations may also ad-

dress notification of other appropriate employees on the affected campus.

Imminent Threats or Emergencies

A member of the team or any District employee may act immediately to prevent an imminent threat or respond to an emergency, including contacting law enforcement directly.

Threat Assessment Process

The District shall develop procedures as recommended by the Texas School Safety Center. In accordance with those procedures, the threat assessment and safe and supportive team shall conduct threat assessments using a process that includes:

1. Identifying individuals, based on referrals, tips, or observations, whose behavior has raised concerns due to threats of violence or exhibition of behavior that is harmful, threatening, or violent.

2. Conducting an individualized assessment based on reasonably available information to determine whether the individual poses a threat of violence or poses a risk of harm to self or others and the level of risk.

3. Implementing appropriate intervention and monitoring strategies, if the team determines an individual poses a threat of harm to self or others. These strategies may include referral of a student for a mental health assessment and escalation procedures as appropriate.

   For a student or other individual the team determines poses a serious risk of violence to self or others, the team shall immediately report to the Superintendent or designee, who shall immediately attempt to contact the student's parent or guardian. Additionally, the Superintendent or designee shall coordinate with law enforcement authorities as necessary and take other appropriate action in accordance with the District's multihazard emergency operations plan.

   For a student the team identifies as at risk of suicide, the team shall follow the District's suicide prevention program.

   For a student the team identifies as having a substance abuse issue, the team shall follow the District's substance abuse program.

   For a student whose conduct may constitute a violation of the District's Student Code of Conduct, the team shall make a referral to the campus behavior coordinator or other appropriate administrator to consider disciplinary action.

As appropriate, the team may refer a student:

1. To a local mental health authority or health-care provider for evaluation or treatment; or

2. For a full individualized and initial evaluation for special education services.

The team shall not provide any mental health-care services, except as permitted by law.

Guidance to School Community

The team shall provide guidance to students and District employees on recognizing harmful, threatening, or violent behavior that may pose a threat to another person, the campus, or the community and methods to report such behavior to the team, including through anonymous reporting.

Reports

The team shall provide reports to the Texas Education Agency as required by law.

Notice of Employee Responsibilities for Promoting Early Mental Health Intervention and Suicide Prevention

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1. What are the District's policies promoting early mental health intervention?

In accordance with District policies FFB(LEGAL) and FFB(LOCAL), school staff members and administrators will be trained to recognize signs, symptoms, behaviors, or verbal or written communications that may indicate a need for student early mental health intervention. Training is offered annually to counselors, teachers, nurses, administrators, and other campus- and department-based staff members, as well as law enforcement officers and social workers who regularly interact with students.

2. Who is the District's designated liaison for purposes of identifying students in need of early mental health intervention and suicide prevention?

Psychological Services, a department of the Academic Support Services division, receives calls for services and support for student threats of harm to self or others and promotes early mental health intervention in collaboration with parents, campus-based staff members, relevant central office departments, and community-based services. As provided in FFB(LOCAL), Psychological Services is the designated District liaison for purposes of identifying students in need of early mental health intervention and suicide prevention, herein referred to as "the District liaison." Psychological Services may be contacted at (713) 696-6430, and Academic Support Services may be contacted at (713) 556-6800.

3. Who is the campus-based liaison for early mental health intervention and suicide prevention?

The principal will designate the school's counselor, social worker, nurse, or trained designee to be the campus-based liaison for early mental health intervention and suicide prevention. The campus-based designee will be expected to work collaboratively with Psychological Services by participating in training to learn how to recognize early warning signs, respond to crisis situations, and support students who exhibit early warning signs of mental health distress or suicide.

4. **What are my responsibilities for providing notice to a student's parent or guardian after identification of early warning signs of mental health symptoms or suicidal thinking?**

All school staff members and administrators will communicate observations about the student (such as distress, feelings of hopelessness, and thoughts about harming himself/herself or others) to the campus-based liaison for early mental health intervention. The campus liaison will communicate the concerns to the District liaison and the parents or guardians and offer campus-, District-, or community-based resources that might help parents or guardians understand their child's needs and provide evidenced-based interventions that promote mental health and wellness to benefit the student.

5. What are my responsibilities for providing notice to a student's parent or guardian regarding psychological counseling for an at-risk student?

For legal requirements and guidance related to counseling, see CONSENT TO COUNSELING in FFE(LEGAL) and FFB(LOCAL).

6. Should I learn that one of my students has attempted suicide, to whom do I report this information?

When school personnel become aware of suicide attempts occurring on or off campus, the student will not be left alone, parents will be notified for an emergency conference, and school personnel will follow procedures in the Houston Independent School District (HISD) Emergency Preparedness Plan (Campus Crisis Intervention: Student Welfare-Verbal or Written Threats of Suicide).

7. Should I learn that one of my students has completed suicide, to whom do I report this information?

a. The Houston Independent School District (HISD) Emergency Preparedness Plan (Campus Crisis Intervention: Student Welfare-Fatality) sets forth the steps to be taken by the campus administrator, teacher, counselor, nurse, and other school personnel in the event of a suicide completion on campus.

b. When school personnel become aware of a student's suicide occurring off campus, the principal and the District liaison will be notified. A plan of support for the campus based on identified need will be developed in collaboration with the principal, District suicide prevention liaison, campus-based liaison, School Support Officer, and All-District Crisis Team members.

8. Will my report be kept confidential?

All school personnel who join with the parent to form a team of support for the student will maintain confidentiality according to applicable legal and local policies regarding student confidentiality and privacy, and only relevant information forming the basis of intervention will be shared on a "need-to-know" basis to address educational or safety needs. [See FL series, DH(LOCAL), and DH(EXHIBIT)]

9. Will I be liable in any way for making a report?

Previous case law has allowed schools in other states to be held liable for NOT reporting warning signs of suicidal thoughts or plans to the parent (guardian).

10. What will happen if I don't report suspected mental health symptoms?

The student may be at risk of the consequences of unmet mental health supports, including reduced motivation, drop in academic performance, strained peer relationships, school avoidance, or other behavioral changes that impact the student's academic achievement and school success. You may also be in violation of District policy.

11. What will happen if I don't report suicidal thinking or suicide attempts?

Student safety may be compromised, and you may be in violation of District policy. See question 9, above, and FFB(LOCAL).

12. What are my responsibilities for following up with a student who has contemplated or attempted suicide?

School personnel will continue to monitor the referred student for several months, even after improvement in symptoms, so that any recurrence of problematic symptoms or increased distress may be addressed immediately. A support team will be established to make sure the student's social-emotional, academic, and behavioral needs have been appropriately met. Any changes in functioning will be communicated to the parent or guardian in a timely manner in order that the student's interventions may be adjusted as needed.

13. How can I receive training or find resources for recognizing the warning signs of the need for early mental health intervention and suicidal thinking or suicide attempts?

a. The District liaison provides department- or campus-based training on Coming Together to Care for Students Who Wish to Harm Self or Others protocol and recognizing early warning signs of suicide and other mental health issues impacting education.

b. Counselors, social workers, psychologists, and nurses may offer suicide prevention training to campuses.

c. Online interactive training opportunities are available for Texas Public High School and Middle School Educators on the Texas Suicide Prevention Web site (www.texassuicideprevention.org/).

d. Employees may sign in to the *HISDConnect* Employee Portal to access "Coping with Crisis" resources or the "Ask a Psychologist" button on the Psychological Services Web site.

e. Mental Health America, the Texas School Safety Center, and the Texas Suicide Prevention Web sites include evidence-based information and provide additional materials and referral resources (www.mhahouston.org/, www.txssc.txstate.edu, and www.texassuicideprevention.org/).

f. Mental health brochures are routinely circulated at school in-services, parent meetings, and health fairs.

Policy and Program to Address Sexual Abuse, Trafficking, and Maltreatment

A district shall provide child abuse antivictimization programs in elementary and secondary schools. *Education Code 38.004*

A district shall adopt and implement a policy addressing sexual abuse, sex trafficking, and other maltreatment of children, to be included in the district improvement plan [see BQ] and any information handbook provided to students and parents. *Education Code 38.0041(a)*

The policy included in any informational handbook provided to students and parents must address the following:

1. Methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;
2. Actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and
3. Available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

19 TAC 103.1401(b)(3)

Definitions

Child Abuse

"Abuse" includes the following acts or omissions by a person:

1. Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
2. Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
3. Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
4. Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

5. Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or disabled individual under Penal Code 21.02, indecency with a child under Penal Code 21.11, improper relationship between educator and student under Penal Code 21.12, sexual assault under Penal Code 22.011, or aggravated sexual assault under Penal Code 22.021;

6. Failure to make a reasonable effort to prevent sexual conduct harmful to a child;

7. Compelling or encouraging the child to engage in sexual conduct as defined by Penal Code 43.01, compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Penal Code 20A.02(a)(7) or (8), solicitation of prostitution under Penal Code 43.021, or compelling prostitution under Penal Code 43.05(a)(2);

8. Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Penal Code or pornographic;

9. The current use by a person of a controlled substance as defined by Health and Safety Code Chapter 481, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

10. Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Health and Safety Code Chapter 481;

11. Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Penal Code 43.25;

12. Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Penal Code 20A.02(a)(5), (6), (7), or (8), or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or

13. Forcing or coercing a child to enter into a marriage.

Abuse does not include the refusal by a person responsible for a child's care, custody, or welfare to affirm a child's perception of the child's gender, including a refusal to use a child's preferred name

or pronouns, regardless of whether the child's name has been legally changed or to affirm a child's expressed sexual orientation.

Neglect

"Neglect" means an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety.

Neglect includes:

1. The leaving of a child in a situation where the child would be exposed to an immediate danger of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

2. The following acts or omissions by a person:

    a. Placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or an immediate danger of harm to the child;

    b. Failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

    c. The failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

    d. Placing a child in or failing to remove the child from a situation in which the child would be exposed to an immediate danger of sexual conduct harmful to the child; or

    e. Placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse as defined above at items 5-9 committed against another child;

3. The failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason,

including having been in residential placement or having run away; or

4. A negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.

Neglect does not include:

1. The refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:
   a. The child has a severe emotional disturbance;
   b. The person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
   c. The person has exhausted all reasonable means available to the person to obtain the mental health services described at item b, above;
2. Allowing the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture; or
3. A decision by a person responsible for a child's care, custody, or welfare to:
   a. Obtain an opinion from more than one medical provider relating to the child's medical care;
   b. Transfer the child's medical care to a new medical provider;
   c. Transfer the child to another health care facility;
4. The refusal by a person responsible for a child's care, custody, or welfare to administer or consent to the administration of a psychotropic medication to the child, or to consent to any other psychiatric or psychological treatment of the child, unless the refusal presents a substantial risk of death, disfigurement, or bodily injury to the child or results in an observable and material impairment to the growth, development, or functioning of the child;

5. Choosing a recognized alternative health-care treatment or therapy for the child that could be considered as new, emerging, or nonstandard, unless the treatment or therapy presents a substantial risk of death, disfigurement, or bodily injury to the child or results in an observable and material impairment to the growth, development, or functioning of the child; or

6. The refusal by a person responsible for a child's care, custody, or welfare to affirm a child's perception of the child's gender, including a refusal to use a child's preferred name or pronouns, regardless of whether the child's name has been legally changed or to affirm a child's expressed sexual orientation.

Family Code 261.001(1), (1-a), (4)

Other Maltreatment

This term has the meaning assigned by Human Resources Code 42.002.

Trafficking of a Child

The definition of child abuse or neglect includes the trafficking of a child in accordance with Education Code 38.004.

19 TAC 103.1401(a)

Duty to Report

Report by Any Person

Any person who has reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as required by law. *Family Code 261.101(a)*

Report by Any Professional

Any professional who has reasonable cause to believe that a child has been or may be abused or neglected shall make a report as required by law. The report must be made within 24 hours after the professional first has reasonable cause to believe that the child has been or may be abused or neglected or is the victim of an offense of indecency with a child.

A professional may not delegate to or rely on another person to make the report.

A "professional" is a person who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, juvenile probation officers, and juvenile detention or correctional officers.

Family Code 261.101(b)

Abuse of Persons with Disabilities

A person having cause to believe that a person with a disability is in a state of abuse, neglect, or exploitation shall report the information immediately to the Texas Department of Family and Protective Services (DFPS).

A person commits a Class A misdemeanor if the person has cause to believe that a person with a disability has been abused, neglected, or exploited or is in a state of abuse, neglect, or exploitation and knowingly fails to report.

A person filing a report or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of his or her petition, report, testimony, or participation, unless the person acted in bad faith or with a malicious purpose.

Human Resources Code 48.051, .052, .054

Adult Victims of Abuse

A person or professional shall make a report in the manner required above if the person or professional has reasonable cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of another child or an elderly person or person with a disability. *Family Code 261.101(b-1)*

Restrictions on Reporting

Psychotropic Drugs and Psychological Testing

An employee may not use or threaten to use the refusal of a parent, guardian, or managing or possessory conservator to administer or consent to the administration of a psychotropic drug to a child, or to consent to any other psychiatric or psychological testing or treatment of the child, as the sole basis for making a report of neglect, unless the employee has cause to believe that the refusal:

1. Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
2. Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Education Code 26.0091; Family Code 261.111(a) [See FFEB]

Contents of Report

The report should reflect the reporter's belief that a child has been or may be abused or neglected or has died of abuse or neglect. The individual making the report shall identify, if known:

1. The name and address of the child;
2. The name and address of the person responsible for the care, custody, or welfare of the child;

3. The facts that caused the individual to believe the child has been abused or neglected and the source of the information;

4. The individual's name and telephone number;

5. The individual's:

   a. Home address; or

   b. If the individual is a professional as defined by Family Code 261.101(b) [see Report by Any Professional, above], the individual's business address and profession; and

6. Any other pertinent information concerning the alleged or suspected abuse or neglect.

Family Code 261.102, .104

Confidentiality of Report

A report of alleged or suspected abuse or neglect and the identity of the person making the report is confidential and not subject to release under Government Code Chapter 552 (Public Information Act) and may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by an investigating agency. *Family Code 261.201(a)-(a)(1)*

Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only to a law enforcement officer for the purposes of a criminal investigation of the report, or as ordered by a court under Family Code 261.201. *Family Code 261.101(d)*

Abuse and Neglect Involving School Personnel and Those Responsible for Care

If the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child, the report must be made to DFPS, unless the report is made to a state agency under item 4, below, or the report involves a juvenile justice program or facility [see JJAEPS, below].

All other reports shall be made to:

1. A law enforcement agency;

2. DFPS, Child Protective Services (CPS) Division;

3. A local office of CPS, where available; or

4. The state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred.

Family Code 261.103(a); 19 TAC 103.1401(b)(1)-(2)

"Law enforcement agency" means:

1. The Department of Public Safety;
2. The police department of a municipality;
3. The sheriff's office of a county; or
4. A constable's office of a county.

Family Code 261.001(3-a)

"Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

1. A parent, guardian, managing or possessory conservator, or foster parent of the child;
2. A member of the child's family or household as defined by Family Code Chapter 71;
3. A person with whom the child's parent cohabits;
4. School personnel or a volunteer at the child's school;
5. Personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides; or
6. An employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Human Resources Code Chapter 42.

Family Code 261.001(5)

Reporting Abuse, Neglect, or Exploitation in a JJAEP

Any report of alleged abuse, neglect, or exploitation, as those terms are defined in Family Code 261.405, in a juvenile justice program or facility shall be made to the Texas Juvenile Justice Department and a local law enforcement agency for investigation. The term "juvenile justice program" includes a juvenile justice alternative education program. *Family Code 261.405(a)(4)(A), (b)*

Immunity from Liability

A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from any civil or criminal liability that might otherwise be incurred or imposed. *Family Code 261.106*

A district may not suspend or terminate the employment of, or otherwise discriminate against, or take any other adverse employment

action against a professional who makes a good faith report of abuse or neglect. *Family Code 261.110(b)* [See DG]

Criminal Offenses

Failure to Report

A person commits a Class A misdemeanor if he or she is required to make a report under Family Code 261.101(a) [see Duty to Report, above] and knowingly fails to make a report as provided by law.

A person who is a professional commits a Class A misdemeanor if the person is required to make a report under Family Code 261.101(b) [see Duty to Report] and knowingly fails to make a report as provided by law. The professional commits a state jail felony if he or she intended to conceal the abuse or neglect.

Family Code 261.109

False Report

A person commits an offense if, with the intent to deceive, the person knowingly makes a report of abuse and neglect that is false. The offense is a state jail felony, except that it is a felony of the third degree if the person has previously been convicted of the offense. *Family Code 261.107(a)*

Coercion

A public servant, including as a school administrator, who coerces another into suppressing or failing to report child abuse or neglect to a law enforcement agency commits a Class C misdemeanor offense. *Penal Code 39.06*

Civil Liability

A school district that is grossly negligent or reckless, or engages in intentional misconduct, in hiring, supervising, or employing a professional school employee is liable for an act or omission that is committed by the employee against a student enrolled in the school and that is failure to report suspected child abuse or neglect under Family Code 261.101 [see Duty to Report, above]. *Civil Practice and Remedies Code 118.001*

SBEC Disciplinary Action

The State Board for Educator Certification (SBEC) may take any of the actions listed in 19 Administrative Code 249.15(a) (impositions, including revocation of a certificate and administrative penalties) based on satisfactory evidence that the person has failed to report or has hindered the reporting of child abuse pursuant to Family Code 261.001, or has failed to notify the SBEC, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by Education Code 22A.051, 22A.052, 22A.301, and 19 Administrative Code 249.14(d)-(f). *19 TAC 249.15(b)(4)*

Note: The following legal provisions address child abuse and neglect investigations generally. See GRA for additional legal provisions addressing notification requirements and right of access to students when DFPS investigates reports of abuse and neglect at school. See 40 Administrative Code Chapter 707, Subchapter B for more information regarding investigations of abuse or neglect in a school setting.

Investigations

Reports to District

If DFPS initiates an investigation and determines that the abuse or neglect involves an employee of a public elementary or secondary school, and that the child is a student at the school, the department shall orally notify the superintendent of the district in which the employee is employed. *Family Code 261.105(d)*

On request, DFPS shall provide a copy of the completed report of its investigation to the board, the superintendent, and the school principal, unless the principal is alleged to have committed the abuse or neglect. The report shall be edited to protect the identity of the person who made the report. *Family Code 261.406(b)*

Interview of Student

The investigating agency shall be permitted to interview the child at any reasonable time and place, including at the child's school. *Family Code 261.302(b)* [See GRA]

Interference with Investigation

A person may not interfere with an investigation of a report of child abuse or neglect conducted by DFPS. *Family Code 261.303(a)*

Confidentiality

A photograph, videotape, audiotape, or other audio or visual recording, depiction, or documentation of a child that is made by DFPS in the course of an inspection or investigation is confidential, is not subject to release under the Public Information Act, and may be released only as required by state or federal law or rules adopted by the DFPS. *Human Resources Code 42.004*

Reporting Policy

A board shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements of Family Code Chapter 261. *19 TAC 103.1401(b)*

The policies must require every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect to submit a written or oral report to at least one of the authorities listed above [see To Whom Reported, above] within 24 hours or less, as determined by the board, after learning of facts giving rise to the suspicion. *19 TAC 103.1401(b)(1)*

The policies must be consistent with the Family Code Chapter 261 and 40 Administrative Code Chapter 700 (CPS) regarding investigations by DFPS, including regulations governing investigation of abuse by school personnel and volunteers. [See GRA]

The policies must require a report to DFPS if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

1. Penalties under Penal Code 39.06 (misuse of official information), Family Code 261.109 (failure to report), and 19 Administrative Code Chapter 249 (actions against educator's certificate) for failure to submit a required report of child abuse or neglect;

2. Applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including:

    a. Family Code 261.302 and 261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

    b. Family Code 261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator.

3. Immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

4. Oral reports made to DFPS are recorded;

5. Confidentiality provisions relating to a report of suspected child abuse or neglect, including the following:

    a. The requirement for the individual making the report to provide his or her name and telephone number;

    b. The requirement for the individual making the report to provide his or her home address or, if the individual making the report is a school employee, agent, or contractor, provide his or her business address and profession; and

    c. The limited circumstances under which the identity of the individual making a report may be disclosed;

6. Any disciplinary action that may result from noncompliance with a district's reporting policy; and

7. The prohibition under Education Code 26.0091 [see Psychotropic Drugs and Psychological Testing, above].

19 TAC 103.1401(b)(2)

The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator before making a report to one of the agencies listed above.

The policies must:

1. Include the current toll-free number for DFPS;
2. Provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by DFPS; and
3. Include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

19 TAC 103.1401(b)(5)-(8)

Annual Distribution and Staff Development

The policies required by these provisions and adopted by the board shall be distributed to all personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by a board. *19 TAC 103.1401(c)* [See also DH and GRA]

[For training requirements under these provisions, see DMA.]

Required Poster

Using a format and language that is clear, simple, and understandable to students, each public school shall post, in English and in Spanish:

1. The current toll-free DFPS Abuse Hotline telephone number;
2. Instructions to call 911 for emergencies; and
3. Directions for accessing the DFPS Texas Abuse Hotline website[1] for more information on reporting abuse, neglect, and exploitation.

A district shall post the information specified above at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Pro-

tective Services Abuse Hotline telephone number should be in bold print.

Education Code 38.0042; 19 TAC 103.1401(e)-(f)

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[1] Texas Abuse Hotline website: https://www.txabusehotline.org/

Program to Address Child Sexual Abuse, Trafficking, and Maltreatment

The District's program to address child sexual abuse, trafficking, and other maltreatment of children, as included in the District improvement plan and the student handbook, shall include:

1. Methods for increasing staff, student, and parent awareness regarding these issues, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;
2. Age-appropriate, research-based antivictimization programs for students;
3. Actions that a child who is a victim should take to obtain assistance and intervention; and
4. Available counseling options for affected students.

Training

The District shall provide training to employees as required by law and District policy. Training shall address techniques to prevent and recognize sexual abuse, trafficking, and all other maltreatment of children, including children with significant cognitive disabilities. [See DMA]

[See BBD for Board member training requirements and BJCB for Superintendent continuing education requirements.]

Reporting Child Abuse and Neglect

Any person who has reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect has a legal responsibility, under state law, to immediately report the suspected abuse or neglect to an appropriate authority.

As defined in state law, child abuse and neglect include both sex and labor trafficking of a child.

The following individuals have an additional legal obligation to submit a written or oral report within 24 hours of learning of the facts giving rise to the suspicion of abuse or neglect:

1. Any District employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect.
2. A professional who has reasonable cause to believe that a child has been or may be abused or neglected or may have been a victim of indecency with a child. A professional is anyone licensed or certified by the state who has direct contact with children in the normal course of duties for which the individual is licensed or certified.

A person is required to make a report if the person has reasonable cause to believe that an adult was a victim of abuse or neglect as a

child and the person determines in good faith that disclosure of the information is necessary to protect the health and safety of another child or an elderly or disabled person.

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

Oral Reports

As required by law, an oral report made to the Texas Department of Family and Protective Services (DFPS) is recorded.

Restrictions on Reporting

In accordance with law, an employee is prohibited from using or threatening to use a parent's refusal to consent to administration of a psychotropic drug or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, unless the employee has cause to believe that the refusal:

1. Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
2. Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Making a Report

Reports may be made to any of the following:

1. A law enforcement agency, as defined in law;
2. The Child Protective Services (CPS) division of DFPS at 800-252-5400 or the Texas Abuse Hotline website[1];
3. A local CPS office; or
4. If applicable, the state agency operating, licensing, certifying, or registering the facility in which the suspected abuse or neglect occurred.

However, if the suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child, the report must be made to DFPS, unless the report is to the state agency that operates, licenses, certifies, or registers the facility where the suspected abuse or neglect took place; or the report is to the Texas Juvenile Justice Department as a report of suspected abuse or neglect in a juvenile justice program or facility. As defined by law, a person responsible for the care, custody, or welfare of a child includes school personnel and volunteers and day-care workers. [See FFG(LEGAL)]

An individual does not fulfill his or her responsibilities under the law by only reporting suspicion of abuse or neglect to a campus principal, school counselor, or another District staff member. Furthermore, the District is prohibited from requiring an employee to first report his or her suspicion to a District or campus administrator.

In accordance with law, an individual must provide their name and telephone number when making a report. If the individual making the report is a school employee, agent, or contractor, they must also provide their business address and profession.

Confidentiality

The identity of a person making a report of suspected child abuse or neglect shall be kept confidential and disclosed only in accordance with the law and the rules of the investigating agency.

Immunity

A person who in good faith reports or assists in the investigation of a report of child abuse or neglect is immune from civil or criminal liability.

Failing to Report Suspected Child Abuse or Neglect

By failing to report suspicion of child abuse or neglect, an employee:

1. May be placing a child at risk of continued abuse or neglect;
2. Violates the law and may be subject to legal penalties, including criminal sanctions for knowingly failing to make a required report;
3. Violates Board policy and may be subject to disciplinary action, including possible termination of employment; and
4. May have his or her certification from the State Board for Educator Certification suspended, revoked, or canceled in accordance with 19 Administrative Code Chapter 249.

It is a criminal offense to coerce someone into suppressing or failing to report child abuse or neglect.

Responsibilities Regarding Investigations

In accordance with law, District officials shall be prohibited from:

1. Denying an investigator's request to interview a child at school in connection with an investigation of child abuse or neglect;
2. Requiring that a parent or school employee be present during the interview; or
3. Coercing someone into suppressing or failing to report child abuse or neglect.

District personnel shall cooperate fully and without parental consent, if necessary, with an investigation of reported child abuse or neglect. [See GKA]

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[1] Texas Abuse Hotline website: http://www.txabusehotline.org

CHILD ABUSE AND NEGLECT

1. Texas law requires that any person "having cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect" must report the case to any local or state law enforcement agency and to the Department of Family and Protective Services (DFPS)/Harris County Children's Protective Services (CPS). See References (d), (e), (j), and (m). All school personnel will become acquainted with the provisions of the code and will cooperate with all agencies or departments dealing with child abuse or neglect. To view the Texas Family Code on reporting child abuse or neglect, go to the Texas Legislature Online Web site (http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.261.htm#261.101).

DISTRICT RESPONSIBILITIES

2. The Houston Independent School District (HISD) will provide its employees with information on Board policy and procedures for reporting suspected student abuse or neglect. See References (b), (c), (d), (e), (f) and (i). This information is provided through materials and training.

MATERIALS

a. HISD will collaborate with DFPS/CPS and other agencies in the development of informational materials for distribution to all HISD employees.

TRAINING

b. Health and Medical Services and Counseling and Guidance provide staff development training for new and selected staff members on subjects such as:

- Types of child abuse and neglect;
- Recognizing child abuse and neglect; and
- Board policies and procedures for reporting child abuse and neglect.

See References (v) and (w).

DEFINITIONS

3. For the purposes of this regulation, abuse and neglect are defined as follows. See References (j), (o), and (p). To view the Texas Penal Codes, go to the Texas Legislature Online Web site (www.capitol.state.tx.us/statutes/petoc.html).

ABUSE

a. Abuse includes the following acts or omissions by any person:

- Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

- Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
- Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
- Sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by Reference (t), sexual penetration with a foreign object, incest, sexual assault, or sodomy inflicted on or, shown to, or intentionally practiced in the presence of a child if the child is present only to arouse or gratify the sexual desires of any person;
- Sexual conduct harmful to a child’s mental, emotional, or physical welfare, including conduct that constitutes the offense of indecency with a child as defined in References (p), (q), and (r);
- Failure to make a reasonable effort to prevent sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by Reference (t), sexual penetration with a foreign object, incest, sexual assault, or sodomy inflicted on, shown to, or intentionally practiced in the presence of a child if the child is present only to arouse or gratify the sexual desire of any person;
- Compelling or encouraging the child to engage in sexual conduct as defined by Reference (t);
- Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child, if the person knew or should have known that the resulting photograph, film, or depiction of

the child is obscene (as defined by the Texas Penal Code) or pornographic;

- The current use of a controlled substance as defined by Reference (k) in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
- Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Reference (k); or
- Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Reference (u).

NEGLECT

b. Neglect is defined as leaving a child in a situation where a child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and demonstrating an intent not to return by a parent, guardian, or managing or possessory conservator of the child, and includes the following acts or omissions by any person:

- Placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
- The failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
- The failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;
- Placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk or sexual conduct harmful to the child; or

- The failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

REPORTING CHILD ABUSE OR NEGLECT

4. HISD personnel suspecting child abuse or neglect will report the abuse or neglect according to all of the following procedures.

   a. Report any suspected abuse or neglect of a student's physical or mental health or welfare to:

      - The principal or immediate supervisor and the nurse or school counselor; and
      - DFPS/CPS at 1-800-252-5400 or a state or local law enforcement agency within 48 hours.

   b. The principal will assign the nurse or school counselor as his or her designee for assessment purposes. The principal's designee will observe the student and make an assessment of any suspected abuse or neglect. If any abuse or neglect is determined or even suspected by the principal's designee, he or she will:

      - Make an oral report to the DFPS/CPS at 1-800-252-5400 within 48 hours;
      - Notify the principal;
      - Submit a written report within five days to Harris County CPS, 2525 Murworth, Houston, Texas, 77054 with a copy forwarded to the principal. See Reference (x); and
      - Notify the nurse or school counselor as appropriate.

PRINCIPAL'S OR IMMEDIATE SUPERVISOR'S RESPONSIBILITIES

   c. The principal or immediate supervisor will:

      - Keep a copy of the report sent to DFPS/CPS on file. This copy will be kept confidential, as required by law;
      - Notify the HISD Police Department by telephone of the abuse or neglect report made to local law enforcement and DFPS/CPS; and
      - Notify the regional superintendent if the abuse or neglect involves a school employee.

REGIONAL SUPERINTENDENT

d. The regional superintendent will notify the Superintendent via copy of the report to DFPS/CPS only in the event a school employee is involved.

FURTHER INVESTIGATION

e. Further investigation of the potential criminal case is the responsibility of local law enforcement. Criminal investigation is not the responsibility of the school or the District.

NON-LIFE-THREATENING SITUATIONS OF CHILD ABUSE AND NEGLECT

f. DFPS/CPS has developed a Web site (www.txabusehotline.org) for school professionals to report non-life-threatening situations of child abuse and neglect via the Internet to its statewide hotline, Statewide Intake (SWI). Personnel may use the site to report non-life-threatening situations; however use of the site is not a substitute for reporting life-threatening and emergency situations as outlined in this regulation. See REPORTING CHILD ABUSE OR NEGLECT, above. SWI will send an e-mail response acknowledging receipt of the report and provide an intake number for identification and filing purposes.

LEGAL PROVISIONS

5. The following legal provisions apply to the reporting of child abuse and neglect.

IMMUNITY FROM LIABILITY

a. Any person reporting abuse or neglect is immune from civil or criminal liability as long as the report was made in good faith and without malice. See References (d), (e), and (o).

EXCEPTION TO REPORTING

b. If a school professional staff member (i.e., teacher, nurse, counselor, etc.) has cause to believe that the conduct of a person is barred from prosecution under the Texas Penal Code, the staff member is not required to make a report. See Reference (p). Section 21.11(b) of the Texas Penal Code provides a defense to the act if the actor is a child under 17 years old who:

- Was not more than three years older than the victim and of the opposite sex;
- Did not use duress, force, or a threat against the victim at the time of the offense; and
- At the time of the offense was not required under Chapter 62 of the Texas Code of Criminal Procedure to register for life as a sex offender or was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section. See Reference (l).

PROTECTION FOR REPORTING CHILD ABUSE

c. An employer may not suspend, terminate, or otherwise discriminate against a professional employee who in good faith reports child abuse or neglect to his or her supervisor, an administrator where the person is employed, a state regulatory agency, or a law enforcement agency, or initiates or cooperates with an investigation. See Reference (a).

FAILURE TO REPORT

d. Failure to report a case of child abuse or neglect is a class B misdemeanor, punishable by imprisonment of up to six months in jail, a fine of up to $1,000, or both. See Reference (s).

CONFIDENTIALITY

e. All reports of child abuse and neglect are confidential. See References (d), (e), (h), and (n).

REPORTS TO THE DISTRICT

6. Reports to the District regarding investigations of alleged child abuse or neglect by the DFPS will be handled in accordance with the Texas Family Code. See References (d) and (n).

ORAL REPORT

a. According to section 261.105(d) of the Texas Family Code, if the DFPS initiates an investigation and determines that the abuse or neglect involves an employee of an elementary or secondary school, and that the child is a student at the school; the department will orally notify the Superintendent of the District in which the employee is employed.

WRITTEN REPORT

b. As set forth in section 261.406(b) of the Texas Family Code, the DFPS will send a written report of its investigation, as appropriate, to the principal, unless the principal is alleged to have committed the abuse or neglect; the Superintendent; and the HISD Board of Education.

The Superintendent may forward a copy of the report to other staff members as appropriate.

COOPERATION WITH CPS INVESTIGATION

7. To assist with the determination of abuse or neglect, the principal will allow DFPS/CPS personnel to conduct an interview with the student in the school building. The principal is not required to inform the student's parents or guardians, or to secure their consent to the interview or to allow access by DFPS/CPS personnel to the student's school or school health records. If DFPS/CPS determines that a student needs protective custody, the principal may release the student to DFPS/CPS personnel. See References (d), (e), (g), and (h).

IDENTIFICATION OF CPS PERSONNEL

8. The principal must request the DFPS/CPS worker's identification along with the name of his or her supervisor for verification of identity and authorization of the investigation. The

principal will document the incident in writing and forward it to his or her immediate supervisor within three school days of the incident.

ANNUAL REVIEW GUIDELINES

9. HISD Board policies and procedures for reporting suspected child abuse and neglect will be reviewed annually to ensure that current information on state laws and guidelines regarding child abuse and neglect are being maintained by the District.

CONSULTATION

10. This regulation has been through consultation (Administrative: October 10, 2006; Instructional: October 5, 2006; Noninstructional: October 10, 2006).

MAINTENANCE RESPONSIBILITY

11. The assistant superintendent, Student Support Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DG(LEGAL)

(b) Board Policy FFAA(LEGAL)

(c) Board Policy FFAA(LOCAL)

(d) Board Policy FFG(LEGAL)

(e) Board Policy FFG(EXHIBIT)

(f) Board Policy GK(LOCAL)

(g) Board Policy GRA(LEGAL)

(h) Board Policy GRA(LOCAL)

(i) 19 Texas Administrative Code §61.1051 School Districts: Rules on Reporting Child Abuse and Neglect

(j) 19 Texas Administrative Code §249.15 State Board for Educator Certification: Disciplinary Action by Board

(k) Health and Safety Code §481 Texas Controlled Substances Act

(l) Texas Code of Criminal Procedure §62 Sex Offender Registration Program

(m) Texas Education Code §21.006 Requirement to Report Misconduct

(n) Texas Family Code, Chapter 261 Investigation of Report of Child Abuse or Neglect

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(o) Texas Penal Code §9.62 Justification Excluding Criminal Responsibility: Educator-Student

(p) Texas Penal Code §21.11 Sexual Offenses: Indecency with a Child

(q) Texas Penal Code §22.011 Sexual Assault

(r) Texas Penal Code §22.021 Aggravated Sexual Assault

(s) Texas Penal Code §39.06 Abuse of Office: Misuse of Official Information

(t) Texas Penal Code §43.01 Public Indecency: Definitions

(u) Texas Penal Code §43.25 Sexual Performance by a Child

(v) Emergency Preparedness Plan

(w) Recognizing and Reporting Child Abuse

(x) Form – Houston Independent School District Reporting Form for Child Abuse and Neglect

Notice of Employee Responsibilities for Reporting Child Abuse and Neglect

What are the District's policies addressing child abuse or neglect and my responsibilities for reporting suspected child abuse or neglect?

The applicable District policies—FFG(LEGAL), GRA(LEGAL) and (LOCAL), and DH(LOCAL) and (EXHIBIT)—are enclosed in this packet. This distribution is required by state law. At regular intervals, these policies will be addressed in staff development as well. If you have any questions about these policies, please contact Student Support Services at (713) 556-7000.

What are my legal responsibilities for reporting if I suspect that a child has been or may be abused or neglected?

Anyone who suspects that a child has been or may be abused or neglected has a legal responsibility, under state law, for reporting the suspected abuse or neglect to law enforcement or to Child Protective Services (CPS).

Any District employee, agent, or contractor has an additional legal obligation to submit the oral or written report within 48 hours of learning of the facts giving rise to the suspicion.

Are there any restrictions on reporting?

Under state law, an employee is prohibited from using or threatening to use a parent's refusal to consent to administration of a psychotropic drug or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, unless the employee has cause to believe that the refusal:

- Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
- Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

To whom do I make a report?

Reports may be made to any of the following:

- A law enforcement agency: Student Support Services, at (713) 556-7000;
- The Child Protective Services (CPS) division of the Texas Department of Family and Protective Services (1-800-252-5400) or on the Web at www.txabusehotline.org; or
- If applicable, the state agency operating, licensing, certifying, or registering the facility in which the suspected abuse or neglect occurred.

However, if the suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child, the report must be made to CPS, unless the report is to

the state agency that operates, licenses, certifies or registers the facility where the suspected abuse or neglect took place; or the report is to the Texas Juvenile Probation Commission as a report of suspected abuse or neglect in a juvenile justice program or facility.

Reporting your suspicion to a school counselor, a principal, or to another school staff member does NOT fulfill your responsibilities under the law. Furthermore, the District cannot require you to report your suspicion first to a school administrator.

Will my report be kept confidential?

State law requires that the identity of a person making a report of suspected child abuse or neglect be kept confidential.

Will I be liable in any way for making a report?

A person who in good faith reports or assists in the investigation of a report of child abuse or neglect is immune from civil or criminal liability.

What will happen if I don't report suspected child abuse or neglect?

By failing to report a suspicion of child abuse or neglect:

- You may be placing a child at risk of continued abuse or neglect;
- You are violating the law and may be subject to legal penalties, including criminal sanctions;
- You are violating Board policy and may be subject to disciplinary action, including possible termination of your employment; and
- Your certification from the State Board for Educator Certification may be suspended, revoked, or canceled.

What are my responsibilities regarding investigations of abuse or neglect?

State law specifically prohibits school officials from:

- Denying an investigator's request to interview a child at school in connection with an investigation of child abuse or neglect; or
- Requiring that a parent or school employee be present during the interview.

School personnel must cooperate fully and may not interfere with an investigation of reported child abuse or neglect.

Table of Contents

Dating Violence....2
Policy Requirements....2
Student Resources....2
Sexual Harassment....2
Civil Liability....3
Designation of Title IX Coordinator....4
Parties Entitled to Notice....4
Reporting....4
Notification of Policy....5
Publication Requirements....5
Adopting and Publishing Complaint Procedures....5
Response to Sexual Harassment....6
Title IX Coordinator Response....8
Process for Title IX Formal Complaint....9
Recordkeeping....17
Retaliation Prohibited....17
Confidentiality....18

Note: The following legal provisions address dating violence and sexual harassment. For legal provisions addressing discrimination on the basis of disability, sex, and other protected characteristics, see FB.

Dating Violence

Policy Requirements

A district shall adopt and implement a dating violence policy to be included in the district improvement plan.

A dating violence policy must include:

1. A definition of dating violence that includes the intentional use of physical, sexual, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person in a dating relationship, as defined by Family Code 71.0021;
2. A clear statement that dating violence is not tolerated at school; and
3. Reporting procedures and guidelines for students who are victims of dating violence, including a procedure for immediately notifying the parent or guardian of a student about a report received by the district identifying the student as an alleged victim or perpetrator of dating violence.

A dating violence policy must also address safety planning, enforcement of protective orders, school-based alternatives to protective orders, training for teachers and administrators at each district campus that instructs students in grade 6 or higher, counseling for affected students, and awareness education for students and parents.

Education Code 37.083, .0831 [See BQ]

Student Resources

To the extent possible, a district shall make available to students age-appropriate educational materials that include information on the dangers of dating violence and resources to students seeking help. *Education Code 37.0831(c)*

Sexual Harassment

A district may develop and implement a sexual harassment policy to be included in the district improvement plan. *Education Code 37.083* [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 Indep. Sch. Dist., 15 F.3d 443 (5th Cir. 1994)*

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. *20 U.S.C. 1681 (Title IX)*

A district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX. *34 C.F.R. 106.45; 20 U.S.C. 1681* [See also FB regarding Title IX]

Civil Liability

A school district that is grossly negligent or reckless, or engages in intentional misconduct, in hiring, supervising, or employing a professional school employee is liable for an act or omission that is committed by the employee against a student enrolled in the school and that is sexual misconduct.

For purposes of this provision, "sexual misconduct" means sexual abuse or conduct described by Penal Code:

1. 20A.02 (trafficking of persons);
2. 21.02 (continuous sexual abuse of young child or disabled individual);
3. 21.07 (public lewdness);
4. 21.08 (indecent exposure);
5. 21.11 (indecency with a child);
6. 21.12 (improper relationship between educator and student);
7. 21.15 (invasive visual recording);
8. 21.16 (unlawful disclosure or promotion of intimate visual material);
9. 21.165 (possession or promotion of lewd visual material depicting child);
10. 21.17 (voyeurism);
11. 21.18 (sexual coercion);
12. 21.19 (bestiality);
13. 22.011 (sexual assault);
14. 22.012 (indecent assault);
15. 22.021 (aggravated sexual assault); and
16. 43.25 (sexual performance by a child).

For purposes of this provision, “professional school employee” includes:

1. A superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, school counselor, nurse, and teacher's aide employed by a district;
2. A teacher employed by a company that contracts with a district to provide the teacher's services to the school;
3. A student in an education preparation program participating in a field experience or internship;
4. A school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;
5. A member of the board; and
6. Any other person employed by the district whose employment requires certification and the exercise of discretion.

A district’s governmental immunity to suit and from liability is waived to the extent of liability created above.

The professional school employee who committed the act of failure to report must be named as a defendant. The employee may not assert official immunity in such an action.

Civil Practice and Remedies Code 118.001, .002, .006

Designation of Title IX Coordinator

A district must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX, which employee must be referred to as the “Title IX Coordinator.”

Parties Entitled to Notice

The district must notify applicants for admission and employment, students, parents or legal guardians, employees, and all professional organizations holding professional agreements with the district (“Parties Entitled to Notice”) of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.

34 C.F.R. 106.8(a)

Reporting

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report

may be made at any time (including during nonbusiness hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. *34 C.F.R. 106.8(a)*

Notification of Policy

A district must notify the Parties Entitled to Notice, above, that the district does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner. The notification must state that the requirement not to discriminate in the education program or activity extends to employment, and that inquiries about the application of Title IX to such district may be referred to the district's Title IX Coordinator, to the assistant secretary for civil rights of the Department of Education, or both. *34 C.F.R. 106.2(d), .8(b)(1)*

Publication Requirements

A district must prominently display the contact information required to be listed for the Title IX Coordinator and the nondiscrimination policy described at Notification of Policy, above, on its website, if any, and in each handbook that it makes available to the Parties Entitled to Notice, above.

A district must not use or distribute a publication stating that the district treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX.

34 C.F.R. 106.8(b)(2)

Note: To distinguish the process described below from the district's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of Title IX sexual harassment in an education program or activity and against a person in the United States as the district's "Title IX formal complaint process."

Adopting and Publishing Complaint Procedures

A district must adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and a Title IX formal complaint process that complies with 34 C.F.R. 106.45 for formal complaints as defined below.

A district must provide notice to the Parties Entitled to Notice, above, of the district's procedures and Title IX formal complaint process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the district will respond.

The requirements of this provision apply only to sex discrimination occurring against a person in the United States.

34 C.F.R. 106.8(c)-(d)

Response to Sexual Harassment

Definitions

"Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to a district's Title IX Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the district with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the district. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"Consent" is not defined by the Title IX regulations, nor do the regulations require districts to adopt a particular definition of consent with respect to sexual assault.

"Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the district. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the district) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party to a Title IX formal complaint, and must comply with the requirements of the Title IX formal complaint process, including the informal resolution process.

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

"Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or

3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

"Supportive measures" means nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or district-provided housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

34 C.F.R. 106.2, .30(a)

Deliberate Indifference

A district with actual knowledge of sexual harassment in an education program or activity of the district against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A district is deliberately indifferent only if its response to

sexual harassment is clearly unreasonable in light of the known circumstances.

Education Program or Activity

For the purposes of 34 C.F.R. 106.30 [see Definitions, above] and 106.45 [see Process for Title IX Formal Complaint, below], "education program or activity" includes locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

34 C.F.R. 106.44(a)

Title IX Coordinator Response

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Title IX Coordinator must respond in this manner with or without a formal complaint. *34 C.F.R. 106.44(b)(1)*

Supportive Measures Required

A district's response must treat complainants and respondents equitably by offering supportive measures and by following a process that complies with 34 C.F.R. 106.45 [see Process for Title IX Formal Complaint, below] before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. [For Emergency Removal procedures, see below.]

Constitutional Restrictions

The Department of Education may not deem a district to have satisfied the district's duty to not be deliberately indifferent under Title IX based on the district's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

34 C.F.R. 106.44(a)

Response to a Formal Complaint

In response to a formal complaint, a district must follow a process that complies with 34 C.F.R. 106.45 [see Process for Title IX Formal Complaint, below]. *34 C.F.R. 106.44(b)(1)*

Emergency Removal

The Title IX regulations do not preclude a district from removing a respondent from the district's education program or activity on an emergency basis, provided that the district:

1. Undertakes an individualized safety and risk analysis;
2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and

3. Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

34 C.F.R. 106.44(c)

Administrative Leave

The Title IX regulations do not preclude a district from placing a nonstudent employee respondent on administrative leave during the pendency of a Title IX formal complaint. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act. *34 C.F.R. 106.44(d)*

Process for Title IX Formal Complaint

For the purpose of addressing formal complaints of sexual harassment, a district's process must comply with the following requirements. Any provisions, rules, or practices other than those required by this provision that a district adopts as part of its process for handling formal complaints of sexual harassment must apply equally to both parties. *34 C.F.R. 106.45(b)*

A district's Title IX formal complaint process must:

1. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a process that complies with the Title IX regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the district's education program or activity. Such remedies may include the same individualized services described as supportive measures; however, remedies need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent;

2. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;

3. Require that any individual designated by a district as a Title IX Coordinator, investigator, decision-maker, or any person designated by a district to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A district must ensure that Title IX Coordinators, investigators, decision-makers, and any person

who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and Title IX formal complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A district must ensure that decision-makers receive training on any technology to be used at a live hearing, if any, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. [See Hearings, below] A district also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. [See Investigation of a Formal Complaint, below] Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

4. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process;

5. Include reasonably prompt time frames for conclusion of the Title IX formal complaint process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the district offers informal resolution processes, and a process that allows for the temporary delay of the Title IX formal complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

6. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the district may implement following any determination of responsibility;

7. State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the

same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;

8. Include the procedures and permissible bases for the complainant and respondent to appeal;

9. Describe the range of supportive measures available to complainants and respondents; and

10. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

34 C.F.R. 106.45(b)(1)

Notice of Allegations

Upon receipt of a formal complaint, a district must provide the following written notice to the parties who are known:

1. Notice of the district's Title IX formal complaint process, including any informal resolution process.

2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:

   a. The identities of the parties involved in the incident, if known;

   b. The conduct allegedly constituting sexual harassment; and

   c. The date and location of the alleged incident, if known.

   The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and may inspect and review evidence [see Investigation of a Formal Complaint, below]. The written notice must inform the parties of any provision in the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the Title IX formal complaint process.

If, in the course of an investigation, the district decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations, above, the district must provide notice of the additional allegations to the parties whose identities are known.

34 C.F.R. 106.45(b)(2)

Dismissal of a Formal Complaint

The district must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the district's education program or activity, or did not occur against a person in the United States, then the district must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of the district's code of conduct.

The district may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the district; or specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted pursuant to 34 C.F.R. 106.45(b)(3), the district must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Consolidation of Formal Complaints

A district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a Title IX formal complaint process involves more than one complainant or more than one respondent, references in this provision to the singular "party," "complainant," or "respondent" include the plural, as applicable.

34 C.F.R. 106.45(b)(3)-(4)

Investigation of a Formal Complaint

When investigating a formal complaint and throughout the Title IX formal complaint process, a district must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the district and not on the parties provided that the district cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physi-

cian, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the district obtains that party's voluntary, written consent to do so for a Title IX formal complaint (if a party is not an "eligible student," as defined in 34 C.F.R. 99.3 then the district must obtain the voluntary, written consent of a "parent," as defined in 34 C.F.R. 99.3) [see FL(LEGAL) at Education Records];

2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

4. Provide the parties with the same opportunities to have others present during any Title IX formal complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or Title IX formal complaint proceeding; however, the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the district does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the district must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will

consider prior to completion of the investigative report. The district must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

7. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 C.F.R. 106.45(b)(5)

Hearings

The district's Title IX formal complaint process may, but need not, provide for a hearing. With or without a hearing, after the district has sent the investigative report to the parties pursuant to 34 C.F.R. 106.45(b)(5)(vii) [see Investigation of a Formal Complaint, above] and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant. *34 C.F.R. 106.45(b)(6)(ii)*

Determination Regarding Responsibility

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the district must apply the standard of evidence described at Process for Title IX Formal Complaint, above.

The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment;

2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and wit-

nesses, site visits, methods used to gather other evidence, and hearings held;

3. Findings of fact supporting the determination;

4. Conclusions regarding the application of the district's code of conduct to the facts;

5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant; and

6. The district's procedures and permissible bases for the complainant and respondent to appeal.

The district must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

34 C.F.R. 106.45(b)(7)(i)-(ii)

Implementation of Remedies

The Title IX Coordinator is responsible for effective implementation of any remedies. *34 C.F.R. 106.45(b)(7)(iv)*

Appeals

A district must offer both parties an appeal from a determination regarding responsibility, and from a district's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;

2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A district may offer an appeal equally to both parties on additional bases.

As to all appeals, the district must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards in the Title IX regulations regarding conflict of interest and bias [see Process for Title IX Formal Complaint, item 3, above];
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

34 C.F.R. 106.45(b)(8)

Informal Resolution

A district may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with Title IX. Similarly, a district may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the district:

1. Provides to the parties a written notice disclosing:
    a. The allegations;
    b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX formal complaint process with respect to the formal complaint; and
    c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

2. Obtains the parties' voluntary, written consent to the informal resolution process; and

3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

34 C.F.R. 106.45(b)(9)

Recordkeeping

A district must maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity;

2. Any appeal and the result therefrom;

3. Any informal resolution and the result therefrom; and

4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A district must make these training materials publicly available on its website or if the district does not maintain a website the district must make these materials available upon request for inspection by members of the public.

For each response required under Title IX Coordinator Response, above, a district must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the district must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the district's education program or activity.

If a district does not provide a complainant with supportive measures, then the district must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the district in the future from providing additional explanations or detailing additional measures taken.

34 C.F.R. 106.45(b)(10)

Retaliation Prohibited

No district or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated

or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Complaints alleging retaliation may be filed according to the Process for Title IX Formal Complaint above.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX formal complaint proceeding does not constitute retaliation prohibited by Title IX, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

34 C.F.R. 106.71(a)-(b)

Confidentiality

The district must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 C.F.R. 106.71(a)*

Note: This policy addresses discrimination, including harassment and retaliation against District students. For provisions regarding discrimination, including harassment and retaliation against 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.

Prohibited Conduct

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

Prohibited conduct also includes sexual harassment as defined by Title IX. [See FFH(LEGAL)]

Statement of Nondiscrimination

The District prohibits discrimination, including harassment, against any student. Discrimination is defined as treating a student or group of students differently from similarly situated students on the basis of race, color, religion, sex, gender, national origin, age, disability, ancestry, marital status, veteran status, political affiliation, sexual orientation, gender identity and/or gender expression, or any other basis prohibited by law. Retaliation against anyone exercising their rights under this policy is a violation of District policy and is prohibited.

Harassment

Harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student's race, color, religion, sex, gender, national origin, age, disability, ancestry, marital status, veteran status, political affiliation, sexual orientation, gender identity and/or gender expression, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

- 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;
- Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
- Otherwise adversely affects the student's educational opportunities.

Harassment includes dating violence as defined by law and this policy.

Examples

Examples of prohibited harassment may include offensive or derogatory language directed at another person's religious beliefs or

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

Title IX Sexual Harassment

As required by law, the District shall follow the procedures below at Response to Title IX Sexual Harassment upon a report of sex-based harassment, including sexual harassment, sex-based discrimination, gender-based harassment, and dating violence, when such allegations, if proved, would meet the definition of sexual harassment in an education program or activity and against a person in the United States under Title IX. [See FFH(LEGAL)]

Other 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:

- 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
- The conduct is so severe, persistent, or pervasive that it:
    - 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
    - Creates an intimidating, threatening, hostile, or abusive educational environment.

Romantic or other 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:

- 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;

- Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
- Otherwise adversely affects the student's educational opportunities.

Examples

Examples of sexual harassment of a student may include sexual advances; touching intimate body parts or coercing physical contact that is sexual in nature; jokes or conversations of a sexual nature; and other sexually motivated conduct, contact, or communications, including electronic communication.

Necessary or permissible physical contact 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:

- 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;
- Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
- Otherwise adversely affects the student's educational opportunities.

Examples

Examples of gender-based harassment directed against a student, regardless of the student's or the harasser's actual or perceived sexual orientation or gender identity, may include offensive jokes, name-calling, slurs, or rumors; cyberharassment; physical aggression or assault; threatening or intimidating conduct; or other kinds of aggressive conduct such as theft or damage to property.

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:

- 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;
- Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
- Otherwise adversely affects the student's educational opportunities.

Examples — Examples of dating violence against a student may include physical or sexual assaults; name-calling; put-downs; or threats directed at the student, the student's family members, or members of the student's household. Additional examples may include destroying property belonging to the student, threatening to commit suicide or homicide if the student ends the relationship, attempting to isolate the student from friends and family, stalking, threatening a student's spouse or current dating partner, or encouraging others to engage in these behaviors.

Reporting Procedures

Student Report — Any student who believes that they have experienced prohibited conduct and any person who believes that a student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, other District employee, or the appropriate District official listed in this policy.

Employee Report — Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall immediately 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, and the Superintendent.

Title IX Coordinator — Reports of discrimination based on sex, including sexual harassment, gender-based harassment, or dating violence, 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 District compliance with all other nondiscrimination laws.

Alternative Reporting Procedures

An individual 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 appoint an appropriate person to conduct an investigation.

Timely Reporting

To ensure the District's prompt investigation, reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act.

Notice 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.]

When the District receives a report of prohibited conduct that includes dating violence, the appropriate District official shall immediately notify the parent or guardian of the student who has been identified in the report as the alleged victim or perpetrator.

Investigation of Reports Other Than Title IX

The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX, including sexual harassment, gender-based harassment, and dating violence, see the procedures below at Response to Title IX Sexual Harassment.

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

Initial Assessment

Upon receipt or notice of a report, the District official shall determine whether the allegations, if proved, would constitute prohibited conduct as defined by this policy. If so, the District shall immediately undertake an investigation, except as provided below at Criminal Investigation.

If the District official determines that the allegations, if proved, would not constitute prohibited conduct as defined by this policy, the District official shall refer the complaint for consideration under FFI.

Interim Action

If appropriate and regardless of whether a criminal or regulatory investigation regarding the alleged conduct is pending, the District

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 the District official or a designee, such as the principal, or by a third party designated by the District, such as an attorney. When appropriate, the principal shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

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

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.

Corrective Action

Examples of corrective action may include a training program for those involved in the report, a comprehensive education program for the school community, counseling to the victim and the student

who engaged in prohibited conduct, follow-up inquiries to determine if 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 prohibited conduct has occurred, and reaffirming the District's policy against discrimination, harassment, and retaliation.

Bullying — If the results of an investigation indicate that bullying occurred, as defined by FFI, the District official shall refer to FFI for appropriate notice to parents and District action. The District official shall refer to FDB for transfer provisions.

Improper Conduct — If the investigation reveals improper conduct that did not rise to the level of prohibited conduct or bullying, the District may take disciplinary action in accordance with the Student Code of Conduct or other corrective action reasonably calculated to address the conduct.

Court Orders — The District and each school shall, to the extent possible, enforce court-ordered protective orders resulting from dating violence and related issues, and, when deemed appropriate, shall implement school-based alternatives to protective orders, which shall include transferring an alleged victim or perpetrator under the safe school choice option or placing the alleged perpetrator in a District alternative educational program. [See FDE]

Confidentiality — To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

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

Response to Title IX Sexual Harassment — For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).

General Response — When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:

- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;

- Consider the complainant's wishes with respect to supportive measures; and
- Explain to the complainant the option and process for filing a formal complaint.

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

If a formal complaint is not filed or dismissed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and the Student Code of Conduct. The Title IX coordinator also reserves the right to sign a formal complaint, initiating the Title IX grievance process, if it would be deliberately indifferent not to investigate and respond to the prohibited conduct in accordance with Board policies and the Student Code of Conduct.

Title IX Formal Complaint Process

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

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

- Equitable treatment of complainants and respondents;
- An objective evaluation of all relevant evidence;
- A requirement that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias;
- A presumption that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process;
- Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process, including time frames

for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law;

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

Standard of Evidence

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

Retaliation

The District prohibits retaliation by a student or District employee against a student alleged to have experienced discrimination or harassment, including dating violence, or another student who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or participates in an investigation. The definition of prohibited retaliation under this policy also includes retaliation against a student who refuses to participate in any manner in an investigation under Title IX. In the absence of a formal Title IX complaint, allegations of retaliation shall be investigated under Investigation of Reports Other Than Title IX, above.

Examples	Examples of retaliation may include threats, intimidation, coercion, 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 or offers false statements in a District investigation regarding discrimination or harassment, including dating violence, shall be subject to appropriate disciplinary action in accordance with law.
Records Retention	The District shall retain copies of allegations, investigation reports, and related records regarding any prohibited conduct in accordance with the District's records control schedules, but for no less than the minimum amount of time required by law. [See CPC] [For Title IX recordkeeping and retention provisions, see FFH(LEGAL) and the District's Title IX formal complaint process.]
Access to Policy and Procedures	Information regarding 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 readily available at each campus and the District's administrative offices.

SEXUAL HARASSMENT PROHIBITIONS

1. To ensure compliance with federal and state regulations and Houston Independent School District (HISD) Board policy, District practice includes the following responsibilities and guidelines for sexual harassment of students. See References (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (r). Employee complaints or claims of sexual harassment are addressed in Reference (p).

GENERAL RESPONSIBILITIES AND GUIDELINES

IMPLEMENTATION

a. All principals, assistant principals, teachers, work location supervisors, department heads, and other school District personnel are responsible for implementing References (a), (j), (k), and (l) throughout the District.

SUPERVISION

b. HISD's Human Resources' Equal Employment Opportunity (EEO) office is responsible to the Superintendent for ensuring that the District adheres to References (a), (j), (k), and (l) and this regulation, including implementation of appropriate monitoring to ensure compliance. In addition, HISD's EEO Office oversees and monitors the prompt and thorough investigation of all sexual harassment complaints lodged by students or on behalf of students.

IMMEDIATE ACTION

c. Students, parents or guardians, HISD employees, or individuals with knowledge of an alleged act of sexual harassment are required to make their complaint(s) immediately following the alleged act. Employees are especially encouraged to immediately report all acts of sexual harassment of students, including sexual harassment of students by students.

SCHOOL RECORD

d. Any HISD employee receiving a complaint of sexual harassment of a student must report it to the school principal or to the appropriate regional superintendent, or a designee.

CHILD ABUSE

e. Acts of sexual harassment that constitute physical, emotional, or sexual abuse of a minor child will be reported to Harris County Department of Family and Protective Services (DFPS) by the principal. See Reference (q).

FALSE ACCUSATIONS

f. Students, parents or guardians, and employees must be aware that intentionally filing false accusations of sexual harassment may result in disciplinary or legal action (for employee~~'~~s, disciplinary actions up to and including termination).

RETALIATION

g. Retaliation against a student~~s~~ who makes a sexual harassment complaint~~s~~ or who assist the District in an in-

vestigation of a sexual harassment complaint is strictly prohibited. Acts of retaliation will result in disciplinary action that may include termination of employees or discipline of students.

PARENT NOTIFICATION OF INTERVIEW

h. Parents or guardians should be notified in advance if their children will be interviewed during an investigation of sexual harassment.

INTIMIDATION OF WITNESS

i. Participants in an investigation will not interfere with the investigation by intimidating any potential witness or by withholding information.

CONFIDENTIALITY

j. To the extent possible, every effort will be made to maintain confidentiality during an investigation.

REPORTING AND INVESTIGATING COMPLAINTS OF STUDENT SEXUAL HARASSMENT BY ANOTHER STUDENT

2. Student misconduct alleged to be sexual harassment by one student toward another student should be reported to a campus teacher, counselor, principal, or other adult staff member. The adult who receives the report of student misconduct will follow the procedures in Reference (s) for reporting, investigating, and responding to student misconduct. Students found to have committed such misconduct will be disciplined according to the levels of student misconduct in Reference (s). Students and parents may follow the steps outlined in Reference (s) if they are not satisfied with the resolution reached at the school level.

REPORTING AND INVESTIGATING COMPLAINTS OF STUDENT SEXUAL HARASSMENT BY AN ADULT

3. A student, parent or guardian, or other individual with knowledge of an alleged act of sexual harassment of a student by an adult is encouraged to report it to a teacher, counselor, nurse, school administrator, principal, or the principal's designee. At any time, including at the time of making the initial complaint, the student, parent or guardian, or other individual with knowledge of the alleged act of sexual harassment may complain directly to the appropriate regional superintendent or a designee, or HISD's EEO Office. Whenever a complaint of sexual harassment of a student by an adult is received, the following steps will be taken:

FILE COMPLAINT FORM

a. Efforts will be taken by the person receiving the complaint to obtain all of the facts from the student and to verify these facts. Such efforts may include requesting a written statement from the student, contacting the student's parents or guardian, and obtaining names of witnesses of the alleged acts of sexual harassment. The individual receiving the complaint will complete the Sexual Harassment Complaint Form and retain a copy in the school's files. See Reference (t). The completed com-

plaint forms should be sent to HISD's EEO Office and the appropriate regional superintendent or a designee. Copies of this form are available from HISD's EEO Office and may be duplicated by the school administration.

CONTACT DFPS

b. DFPS must be contacted by the principal or by his or her designee.

INVESTIGATE

c. A prompt and thorough investigation must be conducted by the school, the appropriate regional superintendent or a designee, or by HISD's EEO Office. The investigation will begin within five school days of receiving the information from the student, parent or guardian, or other individual with knowledge of the alleged act of sexual harassment.

INTERVIEW THE ACCUSED PERSON

d. A thorough investigation includes an interview with the individual who allegedly committed the sexual harassment to inform the individual of the specific allegations and to provide an opportunity for a response.

NOTIFY THE COMPLAINANT OF RESOLUTION

e. Upon completion of the investigation, the student and parents or guardians should be informed of the resolution of the complaint.

NOTIFY THE ACCUSED PERSON OF RESOLUTION

f. Upon completion of the investigation, the individual who allegedly committed the sexual harassment shall be informed of the resolution of the complaint. The individual may be accompanied by a representative of his or her choice to discuss the resolution of the complaint.

COMPLETE DOCUMENTATION

g. Upon completion of the investigation, the Sexual Harassment Response Form, along with documentation of the complaint, steps taken to investigate the complaint and the proposed resolution will be sent by the school administration to HISD's EEO Office and the appropriate regional superintendent or a designee. Copies of this form are available from HISD's EEO Office and may be duplicated by the school administration. See Reference (u).

ENFORCE DISCIPLINARY ACTION

h. Any disciplinary action against an HISD employee will be proposed and implemented in accordance with References (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o).

CONSULTATION

4. This regulation has been through consultation (Administrative: December 6, 2005; Instructional: January 5, 2006; Noninstructional: January 10, 2006).

MAINTENANCE RESPONSIBILITY

5. The executive general manager, Human Resources, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DBA(LEGAL)

(b) Board Policy DCA(LEGAL)

(c) Board Policy DFAA(LEGAL)

(d) Board Policy DFAB(LEGAL)

(e) Board Policy DFAC(LEGAL)

(f) Board Policy DFBA(LEGAL)

(g) Board Policy DFBB(LEGAL)

(h) Board Policy DFBB(LOCAL)

(i) Board Policy DFCA(LEGAL)

(j) Board Policy DIA(LEGAL)

(k) Board Policy DIA(LOCAL)

(l) Board Policy DK(LOCAL)

(m) Board Policy FFG(LEGAL)

(n) Board Policy FFH(LEGAL)

(o) Board Policy FFH(LOCAL)

(p) DIA2(REGULATION)

(q) FFG(REGULATION)

(r) Education Amendments of 1972, Title IX

(s) The Student Code of Conduct

(t) Form – Sexual Harassment Complaint Form

(u) Form – Sexual Harassment Response Form

Title IX Coordinator

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

Name: Casteadel Webb Jr.

Position: Title IX Coordinator

Address: 4400 W. 18th Street, Houston, TX 77092

Email: Title IX coordinator (TitleIXComplaints@houstonisd.org)

Telephone: (713) 556-7333

ADA/Section 504 Coordinator

The District designates and authorizes the following person as the ADA/Section 504 coordinator to be responsible for coordinating the District's efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, for students:

Name: Michelle Burke

Position: Director, Response to Intervention

Address: 4400 W. 18th Street, Houston, TX 77092

Email: ADA/Section 504 coordinator (hisdinterventionsdepartment@houstonisd.org)

Telephone: (713) 556-7122

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. Prevents and mediates bullying incidents between students that:
   a. Interfere with a student's educational opportunities; or
   b. Substantially disrupt the orderly operation of a classroom, school, or school-sponsored or school-related activity;
3. Prohibits retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;
4. 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;
5. Establishes the actions a student should take to obtain assistance and intervention in response to bullying;
6. Sets out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;
7. 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;
8. 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;
9. 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.); and

10. Complies with the minimum standards adopted by the Texas Education Agency (TEA) for a district's policy.

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]

Note: Minimum Standards for Bullying Prevention[1] are available on TEA's website.

Internet Posting

The procedure for reporting bullying must be posted on a district's internet website to the extent practicable.

Education Code 37.0832

[1] TEA Minimum Standards for Bullying Prevention: https://tea.texas.gov/texas-schools/health-safety-discipline/student-discipline/minimum-standards-for-bullying-prevention

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.

[See FFI(LEGAL), the Code of Student Conduct, CQ(LOCAL), CQ5(REGULATION), and CQ(EXHIBIT–B)]

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.

Minimum Standards

In accordance with law, the Superintendent shall develop administrative procedures to ensure that minimum standards for bullying prevention are implemented.

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

Student Report

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 Dis-

trict employee. The Superintendent shall develop procedures allowing a student to anonymously report an alleged incident of bullying.

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.

Periodic Monitoring — The Superintendent shall periodically monitor the reported counts of bullying incidents, with an awareness that declines in the count may represent not only improvements in the campus culture because bullying declines, but also declines in the campus culture because of a decline in openness to report incidents.

Notice of Report — When an allegation of bullying is reported, the principal or designee shall notify a parent of the alleged victim within 24 hours 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 10 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 notify the parents of the victim and of the student who engaged in bullying within 24 hours.

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 Code of Student 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 Code of Student 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 Code of Student 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.

Each student is expected to respect the rights and privileges of other students, teachers, and District staff. All teachers, administrators, and other District personnel are expected to respect the rights and privileges of students. [See DH series]

STUDENT HANDBOOK

The Superintendent or designee shall develop student handbooks with information on curriculum, grading, extracurricular activities, and other such topics that students and parents are likely to need during the school year. In case of conflict between a Board policy or the Student Code of Conduct and provisions of student handbooks, policy and/or the Student Code of Conduct shall prevail.

NO BOARD ACTION

Student handbooks are subject to Board review but shall not be adopted by the Board.

DISTRIBUTION

Student handbooks shall be made available on the District's Web site at the beginning of the school year; hard copies shall be provided upon request. Amendments to the handbook shall be communicated promptly to students and parents.

[For provisions on the Student Code of Conduct, see FO]

First Amendment

A district shall take no action respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition a board for a redress of grievances. *U.S. Const. Amend. I*

Freedom of Speech

Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. At school and school events, students have First Amendment rights, applied in light of the special characteristics of the school environment.

Student expression that is protected by the First Amendment may not be prohibited absent a showing that the expression will materially and substantially interfere with the operation of the school or the rights of others.

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969)
[See also FNCI]

The special characteristics of the school environment and the governmental interest in stopping student drug abuse allow a district to restrict student expression that it reasonably regards as promoting illegal drug use. *Morse v. Frederick, 551 U.S. 393 (2007)*

When a student threatens violence against a student body, such specific threatening speech to a school or its population is unprotected by the First Amendment: school officials may punish such speech without first collecting evidence sufficient to prove a reasonable belief that disruption would occur as a result of the speech. *Ponce v. Socorro Indep. Sch. Dist., 508 F.3d 765 (5th Cir. 2007)*

The inculcation of fundamental values necessary to the maintenance of a democratic society is part of the work of the school. The First Amendment does not prevent school officials from determining that particular student expression is vulgar and lewd, and therefore contrary to the school's basic educational mission. *Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986)*

Public schools may have a special interest in regulating some off-campus student speech, however, the interest must be sufficient to overcome the student's interest in free expression. Circumstances that may implicate a school's regulatory interests include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices. *Mahanoy Area School District v. B.L, 141 S.Ct. 2038 (2021)*

Prayer at School Activities

A public school student has an absolute right to individually, voluntarily, and silently pray or meditate in school in a manner that does not disrupt the instructional or other activities of the school. A student shall not be required or coerced to engage in or refrain from such prayer or meditation during any school activity. *Education Code 25.901*

Nothing in the Constitution as interpreted by the U.S. Supreme Court prohibits any public school student from voluntarily praying at any time before, during, or after the school day. But the religious liberty protected by the Constitution is abridged when a district affirmatively sponsors the particular religious practice of prayer.

A district shall not adopt a policy that establishes an improper majoritarian election on religion and has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events.

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000) (addressing school-sponsored, student-led prayer delivered over the public address system at high school football games) [For invocations and benedictions at commencement, see FMH.]

Federal Funds

As a condition of receiving federal funds under the Elementary and Secondary Education Act (ESEA), a district shall certify in writing to the Texas Education Agency (TEA) that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public schools, as detailed in the guidance from the United States secretary of education regarding constitutionally protected prayer. The certification shall be provided by October 1 of each year.

By November 1 of each year, TEA shall report to the secretary a list of districts that have not filed the certification or against which complaints have been made to TEA that the district is not in compliance with this section. The secretary may issue and secure compliance with rules or orders with respect to a district that fails to certify, or is found to have certified in bad faith, that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public schools.

20 U.S.C. 7904

Expression of Religious Viewpoints

A district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious view-

point expressed by the student on an otherwise permissible subject. *Education Code 25.151*

Policies

A district shall adopt and implement a local policy regarding a limited public forum and voluntary student expression of religious viewpoints. If a district voluntarily adopts and follows the model policy governing voluntary religious expression in public schools at Education Code 25.156, the district is in compliance with the provisions of Education Code Chapter 25, Subchapter E covered by the model policy.

A district shall adopt a policy that includes the establishment of a limited public forum for student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum must also require a district to:

1. Provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject;
2. Provide a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies;
3. Ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and
4. State, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the district.

Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint.

Disclaimer

The disclaimer required by item 4, above, must be provided at all graduation ceremonies. A district must continue to provide the disclaimer at any other event in which a student speaks publicly for as long as a need exists to dispel confusion over the district's nonsponsorship of the student's speech.

Education Code 25.152, .155

Class Assignments

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Homework and classroom assignments must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by a district. Students may not be

penalized or rewarded on account of the religious content of their work. *Education Code 25.153*

[For information on the study of religion, see EMI. For information on student religious groups and activities, see FNAB.]

Designated Time for Prayer and Religious Reading

The board may by record vote adopt a policy requiring every campus of the district to provide students and employees with an opportunity to participate in a period of prayer and reading of the Bible or other religious text on each school day.

Resolution

A board resolution to adopt the policy must read as follows:

"The (insert name of school district) shall adopt a policy requiring every campus of (insert name of district) to provide a period of prayer and reading of the Bible or other religious text as provided by Section 25.0823, Education Code."

Policy Requirements

A policy adopted above must:

1. Prohibit a student or employee of the district from being permitted to participate in the period of prayer and reading of the Bible or other religious text unless the employee or parent or guardian of the student submits to the district a signed consent form that includes:
    a. An acknowledgment that the student or employee has a choice as to whether to participate in the period of prayer and reading of the Bible or other religious text;
    b. A statement that the person has no objection to the student's or employee's participation in or hearing of the prayers or readings offered during the period; and
    c. An express waiver of the person's right to bring a claim under state or federal law arising out of the adoption of a policy under this section, including a claim under the Establishment Clause of the First Amendment to the United States Constitution or a related state or federal law, releasing the district or school and district or school employees from liability for those claims brought in state or federal court;
2. Prohibit the provision of a prayer or reading of the Bible or other religious text over a public address system;
3. Specify that a period of prayer or reading of the Bible or other religious text may not be a substitute for instructional time; and

4. Include provisions ensuring a prayer or reading of the Bible or other religious text is not provided in the physical presence of, within the hearing of, or in another manner which would constitute an injury in fact within the meaning of the United States or Texas Constitution on a person for whom a signed consent form has not been submitted or has been revoked.

In order to comply with the requirements above, the policy may require that the period of prayer and reading of the Bible or other religious text be provided:

1. Before normal school hours;

2. Only in classrooms or other areas in which a consent form has been submitted for every employee and student, which may include an entire district if a consent form has been submitted for each employee and student at the campus; or

3. By any other method recommended by the attorney general or legal counsel for the district or school.

Revocation of Consent

An employee or parent or guardian of a student may revoke the person's consent provided above by informing the appropriate school administrator, as determined by the district. An employee or student for whom consent has been revoked may not participate in the period of prayer and reading of the Bible or other religious text until the employee or parent or guardian of the student submits to the district a new consent and remains bound by the waiver described above.

Attorney General Assistance and Defense

The attorney general, on request from the board, shall:

1. Provide advice on best methods for a district to comply with the requirements above;

2. Provide a model consent form that may be used for purposes of providing consent described above; and

3. Defend the district in a cause of action arising out of the adoption of a policy described above.

If the attorney general defends a district, the state is liable for the expenses, costs, judgments, or settlements of the claims arising out of the representation. The attorney general may settle or compromise any and all claims under this provision. The state may not be liable for any expenses, costs, judgments, or settlements of any claims arising out of the adoption of a policy described above against a district not being represented by the attorney general.

Individual Right Unaffected

Regardless of whether the board adopts a policy described above, this provision does not prohibit a student or employee of the district from participating in prayer or reading the Bible or other religious text during a period of the school day that is not designated as a period of prayer and reading of the Bible or other religious text.

Education Code 25.0823

Patriotic Observances

A district may officially encourage students to express love for the United States by reciting historical documents or singing official anthems that contain religious references; such patriotic or ceremonial occasions do not constitute a school-sponsored religious exercise. *Engel v. Vitale, 370 U.S. 421 (1962)*

A district shall not, however, compel students to participate in patriotic observances. *West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (holding unconstitutional a requirement that students salute the United States flag and recite the Pledge of Allegiance)*

[See EC for more information regarding the pledge of allegiance.]

Winter Celebrations

A district may educate students about the history of traditional winter celebrations, and allow students and district staff to offer traditional greetings regarding the celebrations, including:

1. “Merry Christmas”;
2. “Happy Hanukkah”; and
3. “Happy holidays.”

A district may display on school property scenes or symbols associated with traditional winter celebrations, including a menorah or a Christmas image such as a nativity scene or Christmas tree, if the display includes a scene or symbol of more than one religion or one religion and at least one secular scene or symbol.

A display relating to a traditional winter celebration may not include a message that encourages adherence to a particular religious belief.

Education Code 29.920

STUDENT EXPRESSION FNAA
DISTRIBUTION OF NONSCHOOL LITERATURE (LEGAL)

PROTECTED SPEECH

Activities such as distributing literature, displaying signs, petitioning for change, and disseminating information concerning issues of public concern are protected by the First Amendment. *Schenck v. Pro-Choice Network, 519 U.S. 357 (1997) (recognizing leafletting and commenting on matters of public concern as protected speech); Boos v. Barry, 485 U.S. 312 (1988) (recognizing public issue signs as protected speech); Meyer v. Grant, 486 U.S. 414 (1988) (recognizing the solicitation of signatures for a petition drive as protected speech)*

LIMITATIONS ON EXPRESSION

The District may prohibit expression by students if:

1. It materially and substantially interferes with school activities;
2. It materially and substantially interferes with the rights of other students or teachers; or
3. The District can demonstrate reasonable cause to believe that the expression would engender material and substantial interference.

NO VIEWPOINT DISCRIMINATION

The District shall not discriminate based on the viewpoint expressed in private, student-to-student, non-disruptive speech. *Morgan v. Swanson, 659 F.3d 359 (5th Cir. 2011) (recognizing private, non-disruptive, student-to-student speech expressing a religious viewpoint as protected speech)*

PRIOR REVIEW

The District may subject student expression to prior screening under clear and reasonable regulations.

TIME, PLACE, AND MANNER LIMITATIONS

The District may limit student expression in manner, place, or time by means of reasonable, viewpoint-neutral regulations.

Shanley v. Northeast Indep. Sch. Dist., 462 F.2d 960 (5th Cir. 1972); Canady v. Bossier Parish Sch. Bd., 240 F.3d 437 (5th Cir. 2001) [See also CPAB for use of the District's mail system]

Written or printed materials, handbills, photographs, pictures, films, tapes, or other visual or auditory materials not sponsored by the District or by a District-affiliated school-support organization shall not be sold, circulated, distributed, or posted on any District premises by any District student, except in accordance with this policy.

The District shall not be responsible for, nor shall the District endorse, the contents of any nonschool literature distributed by students.

For purposes of this policy, “distribution” means the circulation of more than 20 copies of material from a source other than the District.

Materials distributed under the supervision of instructional personnel as a part of instruction or other authorized classroom activities shall not be considered nonschool literature and shall not be governed by this policy.

[For distribution of nonschool literature by nonstudents, see GKDA]

Limitations on Content

Nonschool literature shall not be distributed by students on District property if:

1. The materials are obscene, vulgar, or otherwise inappropriate for the age and maturity of the audience.
2. The materials endorse actions endangering the health or safety of students.
3. The materials promote illegal use of drugs, alcohol, or other controlled substances.
4. The distribution of such materials would violate the intellectual property rights, privacy rights, or other rights of another person.
5. The materials contain defamatory statements about public figures or others.
6. The materials advocate imminent lawless or disruptive action and are likely to incite or produce such action.
7. The materials are hate literature or similar publications that scurrilously attack ethnic, religious, or racial groups or contain content aimed at creating hostility and violence, and the materials would materially and substantially interfere with school activities or the rights of others.
8. There is reasonable cause to believe that distribution of the nonschool literature would result in material and substantial interference with school activities or the rights of others.

Prior Review

All nonschool literature intended for distribution by students on school campuses or other District premises under this policy shall be submitted to the principal for prior review in accordance with the following:

1. Materials shall include the name of the person or organization sponsoring the distribution.
2. Using the standards found in this policy at Limitations on Content, the principal shall approve or reject submitted materials within two school days of the time the materials were received.

Exceptions to Prior Review

Prior review shall not be required for distribution of nonschool literature by District students only in the following circumstances:

1. Distribution of materials by a student to other attendees during a meeting of a noncurriculum-related student group authorized to meet at school during noninstructional time in accordance with FNAB(LOCAL); or
2. Distribution of nonschool materials in circumstances for which exceptions to prior review are authorized at GKDA(LOCAL).

Even when prior review is not required, all other provisions of this policy shall apply.

Time, Place, and Manner Restrictions

Each campus principal shall designate times, locations, and means by which nonschool literature that is appropriate for distribution, as provided in this policy, may be made available or distributed by students to students or others at the principal's campus.

The Superintendent shall designate times, locations, and means for distribution of nonschool literature by students at District facilities other than school campuses, in accordance with this policy.

Violations of Policy

Failure to comply with this policy regarding distribution of nonschool literature shall result in appropriate administrative action, including but not limited to confiscation of nonconforming materials, suspension of a noncurriculum-related student group's use of District facilities, and/or other disciplinary action in accordance with the Student Code of Conduct.

Appeals

Decisions made by the administration in accordance with this policy may be appealed in accordance with FNG(LOCAL).

Equal Access Act

If a district secondary school receives federal financial assistance and has a limited open forum, as defined below, it shall not deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings. *20 U.S.C. 4071(a)*

Limited Open Forum in Secondary Schools

A district secondary school has a limited open forum for purposes of the Equal Access Act whenever the school grants an offering to or an opportunity for one or more noncurriculum-related student groups to meet on school premises during noninstructional time. *20 U.S.C. 4071(b)*

"Secondary school" means a public school that provides secondary education as determined by state law.

"Meeting" includes those activities of student groups that are permitted under a school's limited open forum and that are not directly related to the school curriculum.

"Noninstructional time" means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

20 U.S.C. 4072(1), (3)–(4)

"Noncurriculum-related student group" means any student group that does not directly relate to the body of courses offered by the school. A student group directly relates to the school's curriculum if it meets any of the following criteria:

1. The subject matter of the group is actually taught or will soon be taught in a regularly offered course.
2. The subject matter of the group concerns the body of courses as a whole.
3. Participation in the group is required for a particular course.
4. Participation in the group results in academic credit.

Westside Cmty. Sch. v. Mergens, 496 U.S. 226 (1990)

If a school has a limited open forum, it shall be deemed to offer a fair opportunity for students to conduct meetings within its forum if it uniformly provides that:

1. The meeting is voluntary and student-initiated.
2. There is no sponsorship of the meeting by the school or any government or its agents or employees. "Sponsorship" includes the act of promoting, leading, and participating in a

meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.

3. School employees are present at religious meetings only in a nonparticipatory capacity.

4. The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school.

5. Nonschool persons shall not direct, conduct, control, or regularly attend activities of student groups.

20 U.S.C. 4071(c), 4072(2)

The establishment of a limited open forum shall not authorize a school or district to:

1. Influence the form or content of any prayer or other religious activity.

2. Require any person to participate in prayer or other religious activity.

3. Expend public funds beyond the incidental cost of providing the space for student-initiated meetings.

4. Compel any school agent or employee to attend a meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee.

5. Sanction meetings that are otherwise unlawful.

6. Limit the rights of groups of students that are not of a specified numerical size.

7. Abridge the constitutional rights of any person.

20 U.S.C. 4071(d)

Maintain Order

The establishment of a limited open forum shall not limit the authority of a school, a district, its agents, or its employees to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary. *20 U.S.C. 4071(f)*

Religious Groups and Activities

Students may organize prayer groups, religious clubs, “see you at the pole” gatherings, or other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for

assembling as is given to other noncurricular groups without discrimination based on the religious content of the students' expression.

If student groups that meet for nonreligious activities are permitted to advertise or announce meetings of the groups, the district may not discriminate against groups that meet for prayer or other religious speech.

The district may disclaim school sponsorship of noncurricular groups and events in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Education Code 25.154

[For information on student expression of religious viewpoints, see FNA]

Student Clubs

Except as provided below, a school district may authorize or sponsor a student club.

A district may not authorize or sponsor a student club based on sexual orientation or gender identity.

A district must require the written consent of the parent of a student enrolled in the district before the student may participate in a student club authorized or sponsored at the district or school.

Education Code 33.0815

For purposes of the Equal Access Act, the District has established a limited open forum for secondary school students enrolled in the District. Each District secondary school campus shall offer an opportunity for noncurriculum-related student groups to meet on school premises during noninstructional time.

The District has not established a limited public forum for elementary school students to meet as noncurriculum-related student groups on school premises during noninstructional time. [See GKD for community access]

SPONSORSHIP

Noncurriculum-related student groups shall not be sponsored by the District and shall in no way imply to students or to the public that they are school-sponsored. All letterheads, flyers, posters, or other communications that identify the group shall contain a disclaimer of such sponsorship.

District personnel shall not promote, lead, or participate in the meetings of noncurriculum-related student groups.

[For student activities sponsored by the District and having subject matter and purposes directly related to the school's curriculum, see FM]

REQUESTS

To receive permission to meet on school premises during noninstructional time, interested students shall file a written request with the principal on a form provided by the District.

The students making the request shall indicate that they have read and understand the policies and rules governing nonsponsored, noncurriculum-related student groups and that the group will abide by those rules.

APPROVAL

The principal shall approve or reject the request within seven school days, subject to the availability of suitable meeting space and without regard to the religious, political, philosophical, or other content of the speech likely to be associated with the group's meetings.

Approval to meet as a nonsponsored, noncurriculum-related group shall be granted for one school year at a time, subject to the provisions of this policy.

MEETINGS

The principal shall designate noninstructional time for meetings of nonsponsored, noncurriculum-related student groups and shall assign each approved group an appropriate location and time.

EMPLOYEE MONITOR

The principal shall assign a District employee to attend and monitor each student group meeting. Monitors shall be present at meet-

ings and activities in a nonparticipatory capacity to maintain order and protect school property.

No employee shall be required to monitor meetings at which the content of the speech would be objectionable to the employee.

ANNOUNCEMENTS AND PUBLICITY

All nonsponsored, noncurriculum-related student groups shall be given access on the same basis for making announcements and publicizing their meetings and activities, in accordance with guidelines developed by the principal.

[For distribution of nonschool materials, see FNAA]

VIOLATIONS

Failure of a student group to comply with applicable rules may result in loss of the right to meet on school premises.

In addition, students who violate applicable rules are subject to disciplinary action in accordance with the Student Code of Conduct.

APPEALS

Decisions made by the administration in accordance with this policy may be appealed in accordance with FNG(LOCAL).

STUDENT RIGHTS AND RESPONSIBILITIES FNB1
INVOLVEMENT IN DECISION MAKING (REGULATION)

BACKGROUND

The Board strongly supports student participation in ways to improve the educational process, set guidelines for student conduct, and advise the administration on school-related endeavors.

As such, the Board authorizes the Superintendent to establish student advisory committees, as deemed advisable by the Superintendent, in order to effect the improvement of all facets of the educational program of the District.

STUDENT ADVISORY COMMITTEE

A student advisory committee is a student-run and student-led committee comprised of student volunteers who are actively enrolled in schools under the governance of the District. Membership of such committees must reflect the District's composite student body, including proportional representation of the student population at schools from across the District.

Committees must not discriminate membership on the basis of a student's age, sex, race, color, creed, religion, ancestry, national origin, sexual orientation, gender identity and/or gender expression, socioeconomic status, handicap or disability, marital status, veteran status, political affiliation, or any other basis prohibited by law that adversely affects the student.

OPERATIONS

Procedures for engagement between student advisory groups and the Superintendent or a designee will be as follows:

DISTRICT LIAISON

1. The Superintendent or designee will serve as the liaison between student advisory groups and the District.

MEETINGS WITH DISTRICT ADMINISTRATION

2. Meetings are normally held monthly prior to each Board meeting or on an as-needed basis at the call of either the District administration or student advisory groups. Specific meeting dates will be designated by the Superintendent or designee at the beginning of each school year for the entire school year.

AGENDA

3. Each student advisory committee is responsible for preparing a meeting agenda, which may include, but not be limited to, guidelines for student conduct, advising the administration on specific issues of student concern, student extracurricular activities, and other school-related endeavors.

DISCUSSION ITEMS

4. The Superintendent's designee and each student advisory group are responsible for disseminating information discussed in meetings to their respective organizations.

DECISIONS

5. Such committees serve in an advisory capacity and are not decision-making bodies.

CONSULTATION

This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY	The chief of staff is responsible for maintenance of this regulation.
EFFECTIVE DATE	This regulation will be effective as of the adoption date, January 20, 2015.

STUDENT RIGHTS AND RESPONSIBILITIES FNB2
INVOLVEMENT IN DECISION MAKING (REGULATION)

GENERAL DESCRIPTION

As defined in its constitution, the Student Congress is a "formal student-run communication mechanism between public high school student volunteers and the Houston education community." For decision purposes, the Student Congress is considered a student advisory committee as defined in FNB1(REGULATION).

MEMBERSHIP

Membership is open to all actively enrolled high students who attend a high school governed by the District.

OFFICERS

Officers of the Student Congress will consist of a speaker and the chairs of standing committees. A candidate for any officer position must be a sophomore or junior in high school and must be a member of the Student Congress prior to elections. Officer terms will be for one school year.

STANDING COMMITTEES

The following standing committees will nominate and elect their chairs.

OUTREACH COMMITTEE

1. The Outreach Committee will manage publications, coordinate with media, and communicate with other education-based organizations.

FINANCE COMMITTEE

2. The Finance Committee will create fund-raising initiatives and manage fiscal policy. The chair has primary responsibility for stewardship of funds and for maintaining appropriate records.

INITIATIVE COMMITTEE

3. The Initiative Committee will design projects and initiatives for the congress.

GOVERNANCE COMMITTEE

4. The Governance Committee will oversee the constitution's application, assist students with transportation and other logistical concerns, record meeting minutes, and find meeting space.

ADVOCACY COMMITTEE

5. The Advocacy Committee will determine key issues and address student grievances for the Student Congress.

OPERATING PROCEDURES

Operating procedures for the Student Congress are as follows:

MEETINGS

1. There will be regularly scheduled Student Congress meetings with its members each school year. The speaker will notify members of the dates and locations of meetings. The speaker will preside at all Student Congress meetings, and the chair of the Governance Committee will serve in the speaker's absence.

2. See FNB1(REGULATION) for information pertaining to meetings with District administrators.

AGENDA	3. The Governance Committee chairperson is responsible for preparing meeting agendas.
RECORDS	4. The Governance Committee chairperson will keep a record of all decisions and significant items discussed during regular and called meetings.
DECISIONS	5. Decisions are made by the majority vote of the Student Congress members.
CONSULTATION	This regulation does not require consultation.
MAINTENANCE RESPONSIBILITY	The chief of staff is responsible for maintenance of this regulation.
EFFECTIVE DATE	This regulation will be effective as of the adoption date, January 20, 2015.

DISCIPLINE MANAGEMENT PROGRAM

Each school district shall adopt and implement a discipline management program to be included in the district improvement plan under Education Code 11.252. [See BQ] The program must provide for prevention of and education concerning unwanted physical or verbal aggression and sexual harassment in school, on school grounds, and in school vehicles. *Education Code 37.083(a)*

Uniforms

If the board determines that requiring school uniforms would improve the learning environment at a school in a district, the board may adopt rules that require students at that school to wear school uniforms. Students shall wear uniforms beginning on the 90th day after the date on which the board adopts the rules.

Funding

The rules adopted by the board must designate a source of funding to be used to provide uniforms for educationally disadvantaged students.

Exemptions

A parent or guardian of a student assigned to a school where uniforms are required may choose for the student to be exempted from the uniform requirement or for the student to be transferred to a school where uniforms are not required and at which space is available. In order to exercise one of these options, the parent or guardian must provide a written statement that states a religious or philosophical objection to the uniform requirement that the board determines is bona fide.

Education Code 11.162

Grooming Regulations

Any student dress or grooming policy adopted by a district, including a student dress or grooming policy for any extracurricular activity, may not discriminate against a hair texture or protective hairstyle commonly or historically associated with race.

“Protective hairstyle” includes braids, locks, and twists.

Education Code 25.902

STUDENT CONDUCT
DRESS CODE

FNCA
(LOCAL)

PURPOSE

The District's dress code is established to teach grooming and hygiene, instill discipline, prevent disruption, avoid safety hazards, and teach respect for authority.

GENERAL GUIDELINES

Students shall be dressed and groomed in a manner that is clean and neat and that will not be a health or safety hazard to themselves or others. The District prohibits any clothing or grooming that in the principal's judgment may reasonably be expected to cause disruption of or interference with normal school operations.

CAMPUS OPTIONS

Each individual school shall establish specific standards for dress and personal grooming, including, if deemed appropriate by the school, instituting the mandatory use of uniforms.

The school shall provide uniforms for economically disadvantaged students. [See FNCA(LEGAL)]

LIABILITY

A parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage proximately caused by:

1. The negligent conduct of the child if the conduct is reasonably attributable to the negligent failure of the parent or other person to exercise that duty; or

2. The willful and malicious conduct of a child who is at least ten years of age but under 18 years of age.

Family Code 41.001

Membership and Solicitation

Misdemeanor Offense

A person commits a Class C misdemeanor if the person:

1. Is a member of, pledges to become a member of, joins, or solicits another person to join or pledge to become a member of a public school fraternity, sorority, secret society, or gang; or
2. Is not enrolled in a public school and solicits another person to attend a meeting of a public school fraternity, sorority, secret society, or gang or a meeting at which membership in one of those groups is encouraged.

Education Code 37.121(a), (c)

Public School Fraternity, Sorority, Secret Society, or Gang

A "public school fraternity, sorority, secret society, or gang" means an organization composed wholly or in part of students of public primary or secondary schools that seeks to perpetuate itself by taking in additional members from the students enrolled in school on the basis of the decision of its membership rather than on the free choice of a student in the school who is qualified by the rules of the school to fill the special aims of the organization. The term does not include an agency for public welfare, including Boy Scouts, Hi-Y, Girl Reserves, DeMolay, Rainbow Girls, Pan-American Clubs, scholarship societies, or other similar educational organizations sponsored by state or national education authorities. *Education Code 37.121(d)*

DAEP Placement

A board or an educator shall recommend placing in a disciplinary alternative education program any student who commits the offenses described above. *Education Code 37.121(b)*

Criminal Offense

A person commits an offense if the person, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang or foreign terrorist organization, threatens the child or a member of the child's family with imminent bodily injury or causes the child or a member of the child's family bodily injury. *Penal Code 71.022(a-1)*

Personal Hazing Offense

A person commits an offense if the person:

1. Engages in hazing.
2. Solicits, encourages, directs, aids, or attempts to aid another in engaging in hazing.
3. Has firsthand knowledge of the planning of a specific hazing incident involving a student in an educational institution, or firsthand knowledge that a specific hazing incident has occurred, and knowingly fails to report that knowledge to a prin-

cipal, the superintendent or other appropriate official, a peace officer, or a law enforcement agency.

Education Code 37.152(a)

Immunity for Reporting Hazing

Any person, including an entity organized to support an organization, who voluntarily reports a specific hazing incident involving a student in accordance with the requirements of Education Code 37.155 is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of the reported hazing incident. *Education Code 37.155*

Definitions

Hazing

"Hazing" means any intentional, knowing, or reckless act occurring on or off the campus of an educational institution, by one person alone or acting with others, directed against a student for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization if the act:

1. Is any type of physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity;
2. Involves sleep deprivation, exposure to the elements, confinement in a small space, calisthenics, or other similar activity that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of the student;
3. Involves consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance, other than as described by item 5, below, that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of the student;
4. Is any activity that induces, causes, or requires the student to perform a duty or task that involves a violation of the Penal Code; or
5. Involves coercing, as defined by Penal Code 1.07, the student to consume:
    a. A drug; or
    b. An alcoholic beverage or liquor in an amount that would lead a reasonable person to believe that the student is intoxicated, as defined by Penal Code 49.01.

Education Code 37.151(6)

Educational Institution

"Educational institution" for purposes of this policy includes a public high school.

Student	“Student” means any person who: 1. Is registered in or in attendance at an educational institution; 2. Has been accepted for admission at the educational institution where the hazing incident occurs; or 3. Intends to attend an educational institution during any of its regular sessions after a period of scheduled vacation.
Organization	"Organization" means a fraternity, sorority, association, corporation, order, society, corps, club, or student government, a band or musical group or an academic, athletic, cheerleading, or dance team, including any group or team that participates in National Collegiate Athletic Association competition, or a service, social, or similar group, whose members are primarily students. *Education Code 37.151*
Information Regarding Gang-Free Zones	A superintendent shall ensure that the student handbook for each campus includes information on gang-free zones and the consequences of engaging in organized criminal activity within those zones. *Education Code 37.110*

Use or Possession by Students

A board shall prohibit students from smoking, using, or possessing e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property.

"E-cigarette" means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device or a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device, regardless of whether the liquid solution or material contains nicotine. The term does not include a prescription medical device, prescription medication, or other prescribed substance unrelated to the cessation of smoking. The term "e-cigarette" includes:

1. A device regardless of whether it is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

2. A component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

Health and Safety Code 161.081(1-a)

[For information regarding the disciplinary consequences of student e-cigarette use, see FOC.]

Enforcement

The board shall ensure that district personnel enforce the policies on school property. *Education Code 38.006* [See DH and GKA]

STUDENT CONDUCT FNCD
TOBACCO USE AND POSSESSION (LOCAL)

USE OR POSSESSION BY STUDENTS

Students shall be prohibited from smoking, using, or possessing tobacco, tobacco products, smokeless cigarettes, electronic cigarettes (e-cigarettes), and any other nicotine delivery device or any substance for consumption containing nicotine, at a school-related or school-sanctioned activity on or off school property.

VIOLATIONS

A student who violates this prohibition shall be subject to appropriate discipline in accordance with the Code of Student Conduct.

Definition

A “personal communication device” means a telephone, cell phone such as a smartphone or flip phone, tablet, smartwatch, radio device, paging device, or any other electronic device capable of telecommunication or digital communication. The term does not include an electronic device provided to a student by a school district.

Personal Communication Device Policy

A board shall adopt, implement, and ensure the district complies with a written policy prohibiting a student from using a personal communication device while on school property during the school day. The district policy may provide for the district to comply by:

1. Prohibiting a student from bringing a personal communication device on school property; or
2. Designating a method for the storage of a student's personal communication device while the student is on school property during the school day.

Exceptions

In adopting the policy, the board must authorize the use of a personal communication device:

1. As necessary to implement an individualized education program, a plan created under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or a similar program or plan;
2. By a student with a documented need based on a directive from a qualified physician; or
3. As necessary to comply with a health or safety requirement imposed by law or as part of the district's safety protocols.

Penalties

The policy must establish disciplinary measures to be imposed for violation of the prohibition and may provide for confiscation of the personal communication device.

Disposal

A district policy may provide for disposal of a confiscated personal communication device in any reasonable manner, provided the district provides the student’s parent 90 days’ prior notice in writing of the district’s intent to dispose of the device.

Education Code 37.082(a)-(d)

Calculator Application

A district shall permit a student enrolled in a course that requires the student to use a graphing calculator to use a calculator application on a computing device, including a personal, laptop, or tablet computer, that provides the same functionality, unless the district makes available to the student a graphing calculator at no cost to the student.

A district may adopt policies related to student use of a computing device for purposes of a calculator application. To the extent Education Code 25.904 conflicts with Education Code 37.082 [see Personal Communication Device Policy, above], Education Code 25.904 prevails.

Education Code 25.904

Note: For searches of personal communication devices or other personal electronic devices, see FNF.

Personal Communication Devices

A student is prohibited from possessing or using a personal communication device on school property during the instructional day, which for the purposes of this policy is defined as from when a student arrives at school until the end of the final period. A student does not violate this policy if a personal communication device is powered off and stored in his or her backpack. A student who violates this policy or any regulations shall be subject to discipline in accordance with FNCE(REGULATION) and the Board-adopted *Student Code of Conduct*.

An authorized District employee shall confiscate a student's personal communication device that is possessed in violation of this policy or any applicable regulations.

A student's confiscated communication device may be retrieved by the student's parent or guardian in accordance with FNCE(REGULATION). If a personal communication device is not retrieved, the District shall dispose of the device after providing the notice required by law.

Exceptions

A student shall be authorized to possess and use a personal communication device on school property during the school day only under the following circumstances:

1. The student's possession and use is necessary for implementation of the student's individualized education program, a 504 plan, or a similar program or plan;
2. The student's possession or use is required due to a documented need based on a directive from a qualified physician; or
3. The student's possession or use is necessary to comply with a health or safety requirement imposed by law or as part of the District or campus safety protocols.

Implementation

The Superintendent shall develop regulations to implement this policy.

Compliance

Annually, the Superintendent shall report to the Board on the implementation and compliance of this policy.

Purpose

In accordance with Education Code 37.082 and policy FNCE(LOCAL), the District has adopted this regulation to maintain an academically focused school environment by restricting the possession and use of personal communication devices on school property during the instructional day.

Definitions

For the purpose of this regulation, the following definitions apply:

Instructional Day

The instructional day starts at the time a student arrives on school property until the conclusion of the final instructional period.

Personal Communication Devices

Personal communication devices are defined in FNCE(LEGAL).

Prohibited Conduct

During the instructional day, students shall not:

- Use phones or other devices for any reason (calls, texts, photos, social media, internet access, and the like);
- Display or visibly carry phones;
- Use smartwatches or other wearable communication devices; or
- Have phones or other devices on school property visible or audible at any time.

Student Expectations

It is the student's responsibility to:

- Leave personal communication devices at home or store them, powered off, in the student’s backpack while on school property during the instructional day;
- Keep all personal communication devices out of sight and unused on school property throughout the instructional day; and
- Avoid carrying personal communication devices in clothing or worn visibly at any time during the instructional day.

Confiscation and Enforcement Procedures

If a personal communication device is seen, heard, or used during the instructional day:

1. The device will be confiscated by school staff.
2. The staff member will place the device in an envelope labeled with the:
    a. Student’s full name;
    b. Date and time of confiscation; and
    c. Name of the staff member.

3. The staff member or an administrator will deliver the device to the office for secure storage.
4. The student's parent or guardian must retrieve the device and sign an acknowledgement of:
    a. State law requirements;
    b. District policy; and
    c. Confirmation of receipt of the device.

The District will not be held responsible for any lost, stolen, or damaged devices confiscated due to violation of Education Code 37.082 and District policy.

Consequences of Device Use

Students who violate this regulation will have their devices confiscated and the following progressive disciplinary measures will be applied:

1. First Offense. Parents or guardians may retrieve the device from the office after school the day the device is confiscated and must review and sign the *HISD Personal Communications Device Policy* as it relates to the law.
2. Second Offense. Parents or guardians may pick up the device in the office at the end of seven full school days after the confiscation. Parents or guardians must review and sign the *Extended Device Confiscation Agreement*.
3. Third Offense. Parents or guardians may pick up the device in the office at the end of 14 full school days after confiscation. Parents or guardians must review and sign the *Extended Device Confiscation Agreement*.
4. Fourth Offense. Parents or guardians may pick up the device in the office at the end of 30 full school days after confiscation. Parents or guardians must review and sign the *Extended Device Confiscation Agreement*.
5. Fifth Offense. The student is assigned to a 10-day disciplinary alternative education program (DAEP). If a device is confiscated during DAEP placement, the device will be held until the end of the semester.

Accommodations and Exceptions

This regulation does not apply to the use of personal communication devices:

- For disability-related accommodations under federal law, including an individualized education plan or Section 504 plan.

- When the student's possession or use is required due to a documented need based on a written directive from a qualified physician.
- For compliance with health and safety requirements imposed by law or as part of the district's or school's safety protocol.
- During or after extracurricular activities that occur on school property and/or in the school building after the instructional day ends with the permission of the coach and/or sponsor of the activity.

Effective Date This regulation is effective as of January 5, 2026.

Alcohol

A board shall prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property. *Education Code 38.007(a)*

Alcohol-Free Zones

A board shall attempt to provide a safe alcohol-free environment to students coming to or going from school.

Cooperative Efforts

A board may cooperate with local law enforcement officials and the Texas Alcoholic Beverage Commission in attempting to provide this environment and in enforcing the alcohol-free zone provisions in the Alcoholic Beverage Code.

Education Code 38.007(b)

Districts in Large Municipalities

If the majority of the area of a district is located in a municipality with a population of 1.3 million or more, the board may petition the commissioners court of the county in which the district is located or the governing board of an incorporated city or town in which the district is located to adopt a 1,000-foot alcohol-free zone. *Education Code 38.007(b); Alcoholic Beverage Code 101.75, 109.33, .59*

Criminal Offense

A person commits an offense (a Class C misdemeanor) if the person possesses an intoxicating beverage for consumption, sale, or distribution while:

1. On the grounds or in a building of a public school; or
2. Entering or inside any enclosure, field, or stadium where an athletic event sponsored or participated in by a public school is being held.

Education Code 37.122

Drug-Free Zones

The punishment is enhanced for offenses under the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, if the offense was committed:

1. In, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school district or a playground; or
2. On a school bus.

Health and Safety Code 481.134(d)(1)-(2)

Abusable Volatile Chemicals

A person commits an offense (Class B misdemeanor) if the person inhales, ingests, applies, uses, or possesses an abusable volatile chemical with intent to inhale, ingest, apply, or use the chemical in a manner:

1. Contrary to directions for use, cautions, or warnings appearing on a label of a container of the chemical; and

2. Designed to affect the person's central nervous system; create or induce a condition of intoxication, hallucination, or elation; or change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.

Health and Safety Code 485.031(a)-(b)

Delivery to a Minor

A person commits an offense if the person knowingly delivers an abusable volatile chemical to a person who is younger than 18 years of age. *Health and Safety Code 485.032*

Paraphernalia

A person commits an offense (Class B misdemeanor) if the person knowingly uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, or otherwise introduce into the body an abusable volatile chemical.

A person commits an offense (Class A misdemeanor) if the person delivers or sells, possesses with intent to deliver or sell, or manufactures with intent to deliver or sell, inhalant paraphernalia, and at that time knows that the person who receives or is intended to receive the paraphernalia intends that it be used to inhale, ingest, apply, use, or otherwise introduce into the body an abusable volatile chemical.

Health and Safety Code 485.033

Note: For disciplinary consequences associated with the offenses above, see FOC and FOD.

Steroid Law Notice

Each school in a district in which there is a grade level of seven or higher shall post in a conspicuous location in the school gymnasium and each other place in a building where physical education classes are conducted the following notice:

Anabolic steroids are for medical use only. State law prohibits possession, dispensing, delivery, or administering an anabolic steroid in any manner not allowed by state law. State law provides that body building, muscle enhancement, or the increase of muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose. Only a medical doctor may prescribe an anabolic steroid or human growth hormone for a person. A violation of state law concerning anabolic steroids or human growth hormones is a criminal offense punishable by confinement in jail or imprisonment in the Texas Department of Criminal Justice.

Education Code 38.008

STUDENT CONDUCT FNCF
ALCOHOL AND DRUG USE (LOCAL)

DEFINITIONS

"Use" means a student has voluntarily introduced into his or her body by any means a prohibited substance recently enough that it is detectable by the student's physical appearance, actions, breath, or speech.

"Under the influence" means not having the normal use of mental or physical faculties; however, the student need not be legally intoxicated.

PROHIBITIONS

In addition to the statutory ban on the possession, use, or transmittal of controlled substances, dangerous drugs, and alcohol [see FNCF(LEGAL)], the District prohibits:

1. The possession, use, or transmittal of paraphernalia related to any prohibited substance.

2. The possession, transmittal, sale, or attempted sale of what is represented to be any prohibited substance, as well as any prescription or nonprescription drug, medicine, vitamin, or other chemicals, including but not limited to aspirin or other pain relievers, stimulants, diet pills, pep pills, "no-doze" pills, cough medicines and syrups, cold medicine, laxatives, stomach or digestive remedies, depressants, and sleeping pills.

USE OF PRESCRIPTION DRUGS

A student who uses a drug authorized by a licensed physician through a prescription specifically for the student's use shall not be considered to have violated this policy.

VIOLATIONS

Students who violate this policy shall be subject to disciplinary action and may be required to complete an appropriate rehabilitation program. [See FO series]

SEARCHES

Cars and lockers may be searched for alcohol and drugs in accordance with Board policy. [See FNF(LEGAL) and (LOCAL)]

Possession of Weapons

Expulsion Offense

A student shall be expelled from school if the student engages in conduct that contains the elements of the offense of unlawfully carrying weapons under Penal Code 46.02, or elements of an offense relating to prohibited weapons under Penal Code 46.05, on school property or while attending a school-sponsored or school-related activity on or off school property, subject to the requirements of Education Code 37.009(a) (pre-placement proceedings). *Education Code 37.007(a)(1)* [See also FOD]

Exception

A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs:

1. At an approved target range facility that is not located on a school campus; and
2. While participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department.

This section does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored shooting sports competition or a shooting sports educational activity.

Education Code 37.007(k)

Federal Firearms Provision

Expulsion Offense

In accordance with the Gun-Free Schools Act, a district shall expel a student who brings a firearm, as defined by federal law, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that the superintendent may modify in writing the length of expulsion in the case of an individual student.

"School" Defined

For expulsion under this provision, "school" means any setting that is under the control and supervision of a district for the purpose of student activities approved and authorized by the district.

20 U.S.C. 7961; Education Code 37.007(e) [See FOD]

Exception

This provision shall not apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the district and the district adopts appropriate safeguards to ensure student safety. *20 U.S.C. 7961(g)* [See also DH and GKA]

Unlawful Carrying of Weapons

Handgun

A person commits an offense if the person:

1. Intentionally, knowingly, or recklessly carries on or about his or her person a handgun;

2. At the time of the offense is younger than 21 years of age or has been convicted of certain offenses described in Penal Code 46.02(a); and

3. Is not on the person's own premises or premises under the person's control; or inside of or directly en route to a motor vehicle that is owned by the person or under the person's control.

Penal Code 46.02(a)

Location-Restricted Knife

A person commits an offense if the person:

1. Intentionally, knowingly, or recklessly carries on or about his or her person a location-restricted knife;

2. Is younger than 18 years of age at the time; and

3. Is not:

   a. On the person's own premises or premises under the person's control;

   b. Inside of or directly en route to a motor vehicle that is owned by the person or under the person's control; or

   c. Under the direct supervision of a parent or legal guardian of the person.

Penal Code 46.02(a-4)

Additional Handgun Offenses

A person commits an offense if the person carries a handgun in violation of Penal Code 46.02(a-5)-(a-7). *Penal Code 46.02*

Definitions

Firearm

For purposes of state law, “handgun” means any firearm that is designed, made, or adapted to be fired with one hand. A “firearm” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. *Penal Code 46.01(3),(5)*

Location-Restricted Knife

“Location-restricted knife” means a knife with a blade over 5-1/2 inches. *Penal Code 46.01(6)*

Prohibited Weapons

Under Penal Code 46.05, a person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

1. An explosive weapon (any explosive or incendiary bomb, grenade, rocket, or mine that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of

causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon). *Penal Code 46.01(2)*

2. A machine gun (any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger). *Penal Code 46.01(9)*

3. Armor-piercing ammunition (handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used primarily in pistols and revolvers). *Penal Code 46.01(12)*

4. A chemical dispensing device (a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of dispensing a chemical capable of causing an adverse psychological or physiological effect on a human being). *Penal Code 46.01(14)*

5. A zip gun (a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance). *Penal Code 46.01(16)*

6. A tire deflation device (a device, including a caltrop or spike strip, that, when driven over, impedes or stops the movement of a wheeled vehicle by puncturing one or more of the vehicle's tires; it does not include a traffic control device that is designed to puncture one or more of a vehicle's tires when driven over in a specific direction, and has a clearly visible sign posted in close proximity to the traffic control device that prohibits entry or warns motor vehicle operators of the traffic control device). *Penal Code 46.01(17)*

7. An improvised explosive device (a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using nonmilitary components. It does not include unassembled components that can be legally purchased and possessed without a license, permit, or other governmental approval; or an exploding target that is used for firearms practice, sold in kit form, and contains the components of a binary explosive. *Penal Code 46.01(19)*

A person does not commit an offense if an item is listed at items 1-3, above, and is registered in the National Firearms Registration

and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or otherwise not subject to that registration requirement or unless the item is classified as a curio or relic by the United States Department of Justice.

Penal Code 46.05(a)

The prohibition on student possession of weapons, as defined in the Student Code of Conduct, at school or any school-related activity extends to the following items, also considered to be weapons:

1. Knives five inches or more in length, the possession of which may trigger expulsion procedures, as determined by the principal, based on facts and circumstances surrounding an incident. [See FNCG(LEGAL)]

2. Any other object used in a way that threatens or inflicts bodily injury to another person.

VIOLATIONS

Students found to be in possession of weapons shall be subject to disciplinary action as specified in the Student Code of Conduct.

DISRUPTION OF LAWFUL ASSEMBLY

A person commits a Class B misdemeanor if the person, alone or in concert with others, intentionally engages in disruptive activity on the campus or property of any school in the District.

DEFINITION

"Disruptive activity" means:

1. Obstructing or restraining the passage of persons in an exit, entrance, or hallway of any building without the authorization of the administration of the school.
2. Seizing control of any building or portion of a building to interfere with any administrative, educational, research, or other authorized activity.
3. Preventing or attempting to prevent by force or violence or the threat of violence any lawful assembly authorized by the school administration so that a person attempting to participate in the assembly is unable to participate due to the use of force or violence or due to a reasonable fear that force or violence is likely to occur.
4. Disrupting by force or violence or the threat of force or violence a lawful assembly in progress.
5. Obstructing or restraining the passage of any person at an exit or entrance to the campus or property or preventing or attempting to prevent by force or violence or by threats thereof the ingress or egress of any person to or from the property or campus without the authorization of the administration of the school.

FREE SPEECH

This provision shall not be construed to infringe upon any right of free speech or expression guaranteed by the constitutions of the United States or the state of Texas.

Education Code 37.123

DISRUPTION OF CLASSES

A person other than a primary or secondary grade student enrolled in the school where the offense occurs commits a Class C misdemeanor if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities. It is an exception to the application of the offense that, at the time the person engaged in the prohibited conduct, the person was younger than 12 years of age.

DEFINITIONS

"Disrupting the conduct of classes or other school activities" includes:

1. Emitting noise of an intensity that prevents or hinders classroom instruction.

2. Enticing or attempting to entice a student away from a class or other school activity that the student is required to attend.

3. Preventing or attempting to prevent a student from attending a class or other school activity that the student is required to attend.

4. Entering a classroom without the consent of either the principal or the teacher and, through either acts of misconduct or use of loud or profane language, disrupting class activities.

"School property" includes a public school campus or school grounds on which a public school is located, and any grounds or buildings used by a school for an assembly or other school-sponsored activity.

"Public property" includes a street, highway, alley, public park, or sidewalk.

Education Code 37.124

STUDENT CONDUCT
DISRUPTIONS

FNCI
(REGULATION)

STUDENT DISRUPTIONS

1. When students come to school, they are expected to follow the rules and regulations of the Houston Independent School District (HISD). See References (a), (c), and (f). A student who leaves class to take part in or instigate a boycott, or who otherwise fails to abide by the rules, regulations, and reasonable requests of school personnel, will immediately be suspended from school for a maximum of three days. A school staff-parent-student conference will be immediately scheduled and held upon the student's return to campus. Such suspension will be consistent with existing rules and regulations of the District as outlined in References (b) and (f).

   During any boycott, walkout, sit-in, or other disturbance, the District will not negotiate or consult with any group of students concerning any real or alleged grievances. Only after the students return to class and abide by the rules and regulations of the District will representatives of the District sit down with them as a group and hear their concerns.

   Anyone who does not have legitimate business on school campuses will be asked to leave immediately. Adults who refuse to comply with this request will be filed upon and the HISD Police Department will be summoned. Students who refuse to leave the campus after they have been suspended will be filed upon and arrested. See References (d) and (e).

   School personnel do not have to take abuse, whether it is physical or verbal, from any student. Students should be reminded of the fact that they will comply with the rules of the school, and their right to attend school is subject to their compliance with these rules.

   These rules and regulations are to be enforced impartially. The superintendent, the HISD Board of Education, and other administrative personnel will give school personnel the full support of the District as they comply with this administrative directive.

CONSULTATION

2. This regulation has been through consultation (Administrative: June 9, 2009; Instructional: June 6, 2009).

MAINTENANCE RESPONSIBILITY

3. The chief academic officer, Academic Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy FNCI(LEGAL)

(b) Board Policy FOB(LEGAL)

(c) Board Policy GKA(LEGAL)

(d) Board Policy GKA(LOCAL)

(e) CK3(REGULATION)

(f) The Student Code of Conduct

STUDENT RIGHTS AND RESPONSIBILITIES FND
MARRIED STUDENTS (LEGAL)

Married students shall have the same rights and responsibilities as unmarried students. This includes the right to participate in any extracurricular activities on the same basis, and subject to the same requirements, as unmarried students. *Carrollton-Farmers Branch Indep. Sch. Dist. v. Knight, 418 S.W.2d 535 (Tex. Civ. App.—Texarkana 1967, writ ref'd n.r.e.); Bell v. Lone Oak Indep. Sch. Dist., 507 S.W.2d 636 (Tex. Civ. App.), writ granted, judgment set aside, 515 S.W.2d 252 (Tex. 1974)*

A district that receives federal funds shall not apply any rule concerning a student's actual or potential marital status that treats students differently on the basis of sex. *20 U.S.C. 1681; 34 C.F.R. 106.40* [See FB]

Except as expressly provided by law, a student who has been married in accordance with Texas law has the capacity and power of an adult, regardless of age. *Family Code 1.104*

STUDENT RIGHTS AND RESPONSIBILITIES FNE
PREGNANT STUDENTS (LEGAL)

TITLE IX

The District shall not discriminate against any student or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the District's program or activity. [See FB]

MEDICAL CERTIFICATION

The District may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

SEPARATE PROGRAM

A district that operates a separate, voluntary program or activity for pregnant students shall ensure that the separate portion is comparable to that offered to nonpregnant students.

LEAVE OF ABSENCE

If the District does not maintain a leave policy for its students, or if a student does not otherwise qualify for leave under such a policy, the District shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long as the student's physician deems medically necessary.

At the end of the leave, the District shall reinstate the student to the status she held when the leave began.

20 U.S.C. 1681; 34 CFR 106.40(b)

STUDENT RIGHTS AND RESPONSIBILITIES FNE
PREGNANT STUDENTS (LOCAL)

Pregnant students have the right to continue their education during pregnancy [see FB] and may choose to exercise that right by:

1. Remaining in the regular school program.
2. Participating in any other special program the District may provide for pregnant students. [See EHBC and EHBD]

The student may also choose to request a leave of absence. Such request shall be accompanied by a licensed physician's certification that the leave is a medical necessity. Students who avail themselves of this option are exempt from compulsory attendance during the period certified by the physician as necessary for the leave of absence.

Searches of Students

Students shall be free from unreasonable searches and seizures by school officials. School officials may search a student's outer clothing, pockets, or property by establishing reasonable cause or securing the student's voluntary consent. Coercion, either expressed or implied, such as threatening to contact parents or police, invalidates apparent consent. *U.S. Const., Amend. 4.; New Jersey v. T.L.O., 469 U.S. 325 (1985); Jones v. Latexo Indep. Sch. Dist., 499 F.Supp. 223 (E.D. Tex. 1980)*

A search is reasonable if it meets both of the following criteria:

1. The action is justified at the inception; i.e., the school official has reasonable grounds for suspecting that the search will uncover evidence of a rule violation or a criminal violation.
2. The scope of the search is reasonably related to the circumstances that justified the search in the first place; i.e., the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

New Jersey v. T.L.O,, 469 U.S. 325 (1985)

Intrusive Searches

A search of a student's underwear is impermissibly intrusive unless the school officials reasonably suspect either that the object of the search is dangerous or that it is likely to be hidden in the student's underwear. *Safford Unified Sch. Dist. No. 1 v. Redding, 557 U.S. 364 (2009), Littell v. Houston Indep. Sch. Dist., 894 F.3d 616 (5th Cir. 2018)*

Random Drug Testing

Whether a particular search is reasonable is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. Thus, the reasonableness of a random student drug-testing policy is determined by balancing the following factors:

1. The nature of the privacy interest compromised by the drug-testing policy.
2. The character of the intrusion imposed by the drug-testing policy.
3. The nature and immediacy of the governmental interests involved and the efficacy of the drug-testing policy for meeting them.

Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995) (upholding a policy requiring urinalysis drug testing as a condition of participating in athletics); Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls, 122 S.Ct. 2559 (2002) (upholding a pol-

icy requiring urinalysis drug testing as a condition of participating in competitive extracurricular activities)

Searches of Telecommunications/ Electronic Devices

A person is prohibited from obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in electronic storage by:

1. Intentionally accessing without authorization a facility through which an electronic communication service is provided; or
2. Intentionally exceeding an authorization to access that facility.

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(a), (c)

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 photo-optical system that affects interstate or foreign commerce. *18 U.S.C. 2510(12)*

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)

Messages that have been sent to a person, but not yet opened, are in temporary, intermediate storage and are considered to be in electronic storage. *See* Steve Jackson Games, Inc. v. U.S. Secret Service, 36 F.3d 457 (5th Cir. 1994). Electronic communications that are opened and stored separately from the provider are considered to be in post-transmission storage, not electronic storage. *See* Fraser v. Nationwide Mut. Ins. Co., 352 F.3d 107 (3d Cir. 2004).

By Law Enforcement

A peace officer may not search a person's cellular telephone or other wireless communications device, pursuant to a lawful arrest of the person, without obtaining a warrant under Code of Criminal Procedure 18.0215.

A peace officer may search a cellular telephone or other wireless communications device without a warrant if:

1. The owner or possessor of the telephone or device consents to the search;
2. The telephone or device is reported stolen by the owner or possessor; or
3. The officer reasonably believes that:
    a. The telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense; or
    b. There exists an immediate life-threatening situation, as defined by Code of Criminal Procedure 18A.201.

Code of Crim. Proc. 18.0215

Use of Trained Dogs

Trained dogs' sniffing of cars and lockers does not constitute a search under the Fourth Amendment. The alert of a trained dog to a locker or car provides reasonable cause for a search of the locker or car if the dog is reasonably reliable in indicating that contraband is currently present. A district need not show that the dog is infallible or even that it is reliable enough to give probable cause.

Trained dogs' sniffing of students does constitute a search and requires individualized reasonable suspicion.

Horton v. Goose Creek Indep. Sch. Dist., 690 F.2d 470 (5th Cir. 1982)

Questioning Students

School officials, not to include Houston Independent School District (HISD) police officers, may question a student regarding the student's own conduct or the conduct of other students that may constitute violations of the law; Board policy, including but not limited to District's Code of Student Conduct; and/or campus policy. In the context of school discipline, students may not refuse to answer questions based on a right not to incriminate themselves.

For provisions pertaining to student questioning by law enforcement officials or other state or local governmental authorities, see GRA(LOCAL).

District Property

School lockers, school desks, school computers, District-provided electronic devices, District technology, including but not limited to District email accounts and similar items are the property of the District and are provided for student use as a matter of convenience. The above-referenced District property remains under the ownership and control of the District, and is subject to random searches or inspections at any time without notice. Students have no expectation of privacy in District property. Students shall be fully responsible for the security and contents of District property assigned to them. No student shall place or keep in a desk, locker, District-provided technology, or similar item any contraband or other article or material prohibited by law, District policy, or the Code of Student Conduct. Students shall be responsible for any prohibited item found in District property provided to the student.

Searches in General

School administrators may conduct reasonable searches of students, their personal belongings, their assigned lockers, or vehicles parked on school property when the school administrator has reasonable cause to believe, which includes individualized suspicion, that students may be in possession of drugs, weapons, alcohol, or other materials (contraband) in violation of school policy or state law. Searches of students shall be conducted in a lawful and nondiscriminatory manner.

School administrators may initiate a search in accordance with law, including, for example, based on reasonable cause (which includes individualized suspicion), voluntary consent, or pursuant to District policy providing for suspicionless security procedures, including the use of metal detectors.

In accordance with the Code of Student Conduct, students are responsible for prohibited items found in their possession, including items in their personal belongings or in vehicles parked on District property.

Reasonable Searches

School administrator searches must be reasonable at their inception and in scope. If there is reasonable cause to believe that

searching a student's person, belongings, or vehicle will reveal evidence of a violation of the Code of Student Conduct, a District official may conduct a search in accordance with law and District regulations.

Suspicionless Searches

For purposes of this policy, a suspicionless search is a search carried out at random locations and times by District personnel as determined by District administrative and law enforcement personnel based on lawful security procedures, such as metal detector searches.

Metal Detector Searches

In order to maintain a safe and disciplined learning environment, the District reserves the right to subject students to metal detector searches when entering a District campus and at off-campus, school-sponsored activities.

Use of Trained Dogs

The District reserves the right to use trained dogs to conduct screening for contraband or other concealed illegal and/or prohibited items. Such procedures shall be unannounced. The dogs shall not be used to sniff the bodies of students; however, students may be asked to leave personal belongings in an area that will be screened. If a dog alerts to an item or an area, the alert is sufficient to raise reasonable cause to justify a lawful search by school administrators.

Effective Date

This policy shall be effective as of the adoption date, November 12, 2021.

Definitions

1. For purposes of this regulation, the following definitions will be applicable:

Contraband

a. Contraband will mean all substances or materials, the presence of which is prohibited by Board policy, state and or local law, including but not limited to controlled substances, drugs, alcohol or alcoholic beverages, glue, volatile chemicals, aerosol paint, guns, knives, weapons, and incendiary devices. See References (a), (b), (c), (d), and (h).

Random Searches

b. Random searches will refer to searches that are conducted without reference to specific dates, locations, or times.

School Property

c. School property refers to all property owned, leased, or operated by the Houston Independent School District (HISD).

Scope of Random Searches

2. Random searches will be directed toward locating items prohibited by law or the Student Code of Conduct in public or common areas on HISD school property. See Reference (h). The boundaries of such searches will include but are not limited to the following areas:

School Property

a. All school property will be subject to random searches at any time. There is no expectation of privacy regarding items placed in school lockers or desks.

Automobiles

b. All automobiles parked on school property will be subject to random searches.

Personal Effects

c. All personal effects will be subject to random searches.

Search of Persons

d. A random search will not be used as grounds to initiate the physical search of any person by a canine.

Evidence Search

e. Search of property seized as evidence incidental to a lawful arrest will be standard practice.

For additional information on student searches, see References (e), (f), and (g).

Search Procedures

3. Schools to be searched will be randomly selected through a computerized format at the direction of the Superintendent of Schools or designee.

4. Random search procedures will be as follows:

Authority

a. The HISD Police Department will be authorized to utilize trained canines to aid in the search for contraband in or

on school-owned property and automobiles parked on school property.

Training

b. An authorized trainer will be responsible for training and documenting the dog's actions and must accompany the canine used in any random search.

Reasonable Cause

c. An indication (trained alert) by the dog to the handler that contraband is present on school property or in or on an automobile being searched will be considered probable cause to extend the focus of the search as needed and to file appropriate charges. See Reference (e).

Safety

d. While a random search is being performed, all students and personnel must remain in their classrooms, work locations, or other areas of school property designated by the school administration in coordination with the HISD Police Department.

Requested Searches

e. The regional superintendent or designee, school principal, or designee may request a search of the school as needed. Searches requiring a canine will be scheduled in advance with the HISD Police Department.

Other Searches

f. Unannounced searches may be conducted by the HISD Police Department or upon request by the Superintendent or designee, as deemed necessary.

Consultation

5. This regulation has been through consultation (Administrative: December 6, 2005; Instructional: January 5, 2006; Noninstructional: January 10, 2006).

Maintenance Responsibility

6. The chief of police, HISD Police Department, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy FNCF(LEGAL)
(b) Board Policy FNCF(LOCAL)
(c) Board Policy FNCG(LEGAL)
(d) Board Policy FNCG(LOCAL)
(e) Board Policy FNF(LEGAL)
(f) Board Policy FNF(LOCAL)
(g) FNF2(REGULATION)
(h) The Student Code of Conduct

Definitions

1. For purposes of this regulation, the following definitions are applicable:

Contraband

a. Contraband means all substances or materials, the presence of which are prohibited by Board policy or state law, including but not limited to controlled substances, drugs, alcohol or alcoholic beverages, abusable glue, volatile chemicals, aerosol paint, guns, knives, weapons, and incendiary devices. See References (a), (b), (c), (d), and (g).

Reasonable Cause

b. Reasonable cause is the standard for a search on school property or at school-related events and is based on the school official's specific reasonable inferences which he or she is entitled to draw from the facts in light of the school official's experience. Specific reasonable inferences may be drawn from instances including but not limited to a tip from a reliable student, suspicious behavior that suggests that contraband is present, a smell indicating the presence of contraband, or a bulge in a pocket, etc. Reasonable cause should not be based on mere hunch.

Searches

2. Areas and persons allowed to be searched include:

School Property

a. Student lockers, desks, and other such property are owned by the school. The school exercises exclusive control over school property. Students should not expect privacy regarding items placed in school property because school property is subject to search at any time by school officials. Students are responsible for whatever is contained in desks and lockers issued to them by the school.

Automobiles

b. Automobiles on school property are subject to search by a school official, if the school official has reasonable cause to believe that contraband is in or on the automobile.

Students

c. Students and their personal effects are subject to being searched by school officials, if a school official has reasonable cause to believe that the student is in possession of contraband.

See References (d), (e), and (f).

Search Procedures

3. If a school official has reasonable cause to believe that contraband is present, he or she may institute a search. Although the following procedures for a search are suggested, they are

not mandated because the circumstances attendant to the need for each search may vary.

Student or Parental Consent

a. The student should ordinarily be required to be present and asked to consent to the search. If after being informed of the basis for the school official's reason to conduct a search, the student does not consent and the circumstances permit, the student's parent or guardian should be called and informed of the circumstances. If the parent or guardian will not consent to the search, the school official may proceed with the search, contact the HISD Police Department, or if necessary call law enforcement authorities. Ordinarily, and if circumstances permit, the search of a person or his or her effects should be conducted out of the presence of other students.

Use of Canines

b. The administration is authorized to utilize canines, whose reliability and accuracy for sniffing out contraband have been established, to aid in the search for contraband in school-owned property and automobiles parked on school property. Canines will not be used to search students unless school officials have established independently that there is reasonable cause to believe the student possesses contraband on his or her person. The canines must be accompanied by a qualified and authorized trainer who will be responsible for the dog's actions. An indication by the dog that contraband is present on school property or an automobile will be reasonable cause for a further search by school officials.

Use of Metal Detectors (Magnetometers)

c. Weapons of any nature on school property or at school functions are prohibited by Board policy and state law. See References (c), (d), and (g). The presence of weapons is inherently dangerous to all persons in the school setting. When the administration has reasonable cause to believe that weapons are in the possession of unidentified students, when there has been a pattern of weapons found at a school, or when violence involving weapons has occurred at a school, the administration is authorized to use stationary or mobile metal detectors. See References (e), (f), (g), and (g).

If a metal detector is to be used in a particular school, the students will be notified of its use via the loudspeaker, at an assembly, or by similar means. On the day of its use, signs will be posted to warn students that each student will be required to submit to a screening for

metal as a condition of entering or continuing attendance at school.

When a metal detector is being used, students will be allowed to use only the entries designated. If a metal detector activates on a student, the student should be asked to remove metal objects from his or her person and walk through or be scanned again. If, after the removal of metal objects there is a third activation of the metal detector on the student, the student should be taken to a room out of view from the other students where the procedures suggested above for a search would be applicable.

Notice of Board Policy

d. Students will be provided notice of the Board policy and District procedures concerning search and seizure through the student handbook or supplemental publication. A copy of the Board policy and District procedures will also be posted in the principal's office or another prominent place in each secondary school. If a metal detector is to be used, additional notices required for its use will be posted and distributed. See References (e) and (f).

Consultation

4. This regulation has been through consultation (Administrative: July 6, 2004; Instructional: July 1, 2004; Noninstructional: May 11, 2004).

Maintenance Responsibility

5. The assistant superintendent, School Operational Support, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy FNCF(LEGAL)

(b) Board Policy FNCF(LOCAL)

(c) Board Policy FNCG(LEGAL)

(d) Board Policy FNCG(LOCAL)

(e) Board Policy FNF(LEGAL)

(f) Board Policy FNF(LOCAL)

(g) The Student Code of Conduct

United States Constitution

A district shall take no action abridging the freedom of speech or the right of the people to petition the board for redress of grievances. *U.S. Const. Amend. I, XIV* [See FNA]

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

Texas Constitution

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

There is no requirement that a board negotiate or even respond to complaints. However, a board must stop, look, and listen and must consider the petition, address, or remonstrance. *Prof'l Ass'n of College Educators v. El Paso County Cmty. [College] Dist., 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)*

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*

Title IX

A district that receives federal financial assistance, directly or indirectly, must adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 C.F.R. 106.8(c)* [See FB and FFH]

Grievances

A board shall provide for procedures to consider complaints that a parent's right has been denied. *Education Code 26.001(d)(1)*

A board shall adopt a grievance procedure that complies with Education Code Chapter 26A under which the board shall address

each grievance that it receives concerning a violation of a right guaranteed by Education Code Chapter 26 (Parental Rights), of a board policy, or of a provision of Education Code Title II.

Exceptions

The board is not required by the provision above or Education Code 11.1511(b)(13) (requiring adoption of a process to hear complaints) to address a grievance concerning a student's participation in an extracurricular activity that does not involve a violation of a right guaranteed by Education Code Chapter 26, of a board policy, or of a provision of Education Code Title II. This provision does not affect a claim brought by a parent under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) or a successor federal statute addressing special education services for a child with a disability.

Notice to Teacher or Employee

The grievance procedure must require that, for a complaint filed against a teacher or other employee, the school district provide notice of the complaint to the teacher or employee against whom the complaint was filed and sufficient opportunity for the teacher or employee against whom the complaint was filed to submit a written response to the complaint to be included in the record.

Education Code 26.011

Grievance Policy

The board shall adopt a grievance policy to address grievances received by the district. *Education Code 26A.001(a)*

Levels of Review

The policy must provide for the following levels of review, except as provided below:

1. Review by the principal of the district campus at which the grievance is filed or the principal's designee or, for a grievance that arises from subject matter unrelated to a campus, an administrator at the school district's central office;
2. If established by the policy, an appeal to an administrator at the school district's central office;
3. An appeal to the superintendent of the school district or the superintendent's designee; and
4. An appeal to the board of trustees of the school district.

A review or appeal on a grievance must be conducted by a person with the authority to address the grievance unless a preliminary hearing is necessary to develop a record or a recommendation for the board of trustees of the school district.

[For requirements for determining level of review related to recusal of a district employee or board member, see General Requirements, below.]

Education Code 26A.001(b), (c)

General Requirements

The policy must:

1. Prohibit the board or a district employee from retaliating against a student or parent of a student who files a grievance in accordance with the policy;
2. Require a person involved in reviewing a grievance under the policy to recuse himself or herself from reviewing the grievance if the person is the subject of the grievance;
3. Provide for a higher level of review if the person who would otherwise review the grievance is required to recuse himself or herself;
4. Provide for the creation and retention of a record of each hearing on the grievance, including documents submitted by the person who filed the grievance or determined relevant by school district personnel and a written record of the decision, including an explanation of the basis for the decision and an indication of each document that supports the decision;
5. Allow the person who filed the grievance to supplement the record with additional documents or add additional claims;
6. Allow for a member of the board to file a grievance with the district, but prohibit the member from voting on matters related to that grievance;
7. Allow for a remand to a lower level of review to develop a record at any time, including at the board level of review;
8. Require the district to direct a grievance that is filed with the incorrect administrator to the appropriate administrator and consider the grievance filed on the date on which the grievance was initially filed;
9. Require the district to issue a decision on the merits of the concern raised in the grievance, notwithstanding procedural errors or the type of relief requested;
10. Unless otherwise required by law, allow for a hearing or meeting at which the grievance will be discussed to be open or closed at the request of the person who filed the grievance; and

11. For a grievance before the board, require that the person who filed the grievance be provided at least five business days before the date on which the meeting to discuss the grievance will be held a description of any information the board of trustees intends to rely on that is not contained in the record; and

12. For a grievance before the board, require the meeting at which the grievance is discussed be recorded by video or audio recording or by transcript created by a certified court reporter.

Education Code 26A.001(e)

Deadlines

Parental Grievances

For a grievance filed by a parent of a student enrolled in the school district, the policy must provide:

1. Sixty days to file a grievance from the date on which the parent knew or had reason to know of the facts giving rise to the grievance; or

2. If the parent or person engaged in informal attempts to resolve the grievance, the later of 90 days to file a grievance from the date determined above or 30 days to file a grievance from the date on which the district provided information to the parent or person regarding how to file the grievance.

Appeal

The policy must provide at least 20 days to file an appeal after the date on which a decision on the grievance was made.

Hearings

For a hearing that is not before the board of trustees of the school district, the policy must require:

1. The district to hold a hearing not later than the 10th day after the date on which the grievance or appeal was filed; and

2. A written decision to be made not later than the 20th day after the date on which the hearing was held that includes any relief or redress to be provided and information regarding filing an appeal, including the timeline to appeal under this provision and Education Code 7.057, if applicable.

For a hearing before the board, the policy must require the board to:

1. Hold a meeting to discuss the grievance not later than the 60th day after the date on which the previous decision on the grievance was made; and

2. Make a decision on the grievance not later than the 30th day after the date on which the meeting is held.

Education Code 26A.002

Board Committee

The board may delegate the authority to hear and decide a grievance to a committee of at least three members composed only of members of the board. For purposes of an appeal to the commissioner under Education Code 7.057, a decision by the committee is a decision of the board of trustees. The policy requirements above apply to the committee in the same manner as those requirements apply to the board. *Education Code 26A.001(e)*

Report on Grievances

A district shall annually submit to the Texas Education Agency (TEA) a report on grievances filed in the district during the preceding year. The report must include for each grievance the resolution of the grievance and any corrective action taken. *Education Code 26A.001(g)*

Not later than December 1 of each year, TEA shall post on the agency's website a report on grievances filed in school districts during the preceding year. The report must aggregate the data statewide and state the number of grievances filed, the number of grievances resolved and the resolution of those grievances, and any corrective actions taken. *Education Code 26A.001(h)*

Filing Procedures and Forms

The board shall develop, make publicly available in a prominent location on the district's website, and include in the district's student handbook the procedures for resolving grievances; standardized forms for filing a grievance, a notice of appeal, or a request for a hearing under this chapter; and the method by which a grievance may be filed electronically.

Electronic Filing

A district shall ensure that a grievance may be submitted electronically at the location on the district's website at which the information described above is available.

TEA Notification

A district shall submit and make accessible to TEA the location on the district's website at which the information described above is available.

Education Code 26A.003

Commissioner Enforcement

If a grievance is appealed to the commissioner under Education Code 7.057, the commissioner of education may:

On Appeal

1. Investigate an alleged violation of state or federal law regarding the confidentiality of student information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.

Section 1232g), relating to the grievance and collaborate with relevant federal agencies in such an investigation; and

2. Take any action necessary to compel the district, the district's board, or a district employee to comply with the state or federal law.

Education Code 26A.001(f)

Determination of Retaliation

If the commissioner determines that a school district educator has retaliated against a student or parent of or person standing in parental relation to a student in violation of the policy requirement, above, the commissioner of education may report the educator to the State Board for Educator Certification for investigation. *Education Code 26A.001(i)*

Superintendent Testimony

If the commissioner of education finds against a school district under Education Code 7.057 in at least five grievances to which that provision applies involving the district during a school year, the superintendent of the school district must appear before the State Board of Education to testify regarding the commissioner's findings and the frequency of grievances against the district. *Education Code 26A.004*

Denial of Class Credit or Final Grade

If a student is denied credit or a final grade for a class by an attendance committee, the student may appeal the decision to the board. *Education Code 25.092(d)* [See FEC]

Complaints Against Professional Employees

A person may not file suit against a professional employee of a district unless the person has exhausted the district's remedies for resolving the complaint. *Education Code 22.0514*

"Professional employee of a district" includes:

1. A superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, school counselor, nurse, and teacher's aide employed by a district;
2. A teacher employed by a company that contracts with a district to provide the teacher's services to the district;
3. A student in an education preparation program participating in a field experience or internship;
4. A DPS-certified school bus driver;
5. A member of the board; and
6. Any other person whose employment by a district requires certification and the exercise of discretion.

Education Code 22.051(a)

Finality of Grades

An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with a district's grading policy applicable to the grade, as determined by the board.

A board's determination is not subject to appeal. This provision does not prohibit an appeal related to a student's eligibility to participate in extracurricular activities under Education Code 33.081. [See FM]

Education Code 28.0214

Closed Meeting

A board may conduct a closed meeting on a parent or student complaint to the extent required or provided by law. *Gov't Code Ch. 551, Subch. D* [See BEC]

Record of Proceedings

An appeal of a board's decision to the commissioner of education shall be decided based on a review of the record developed at the district level. "Record" includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

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

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

19 TAC 157.1073(d)

Definitions

Days

For purposes of this policy, “days” shall mean District business days unless otherwise noted in this policy. In calculating timelines under this policy, the day a document is filed is “day zero.” The following business day is “day one.”

Hearings Committee

The School Board may delegate the authority to hear and decide a grievance to a committee of three or more Board members in accordance with Education Code 26A.001(d).

Superintendent

For the purposes of this policy, “Superintendent” shall mean the Superintendent or designee.

Complaints/ Grievances

In this policy, the terms “complaint” and “grievance” shall have the same meaning.

Other Complaint Processes

Student, parent, or person standing in parental relation to a student grievances shall be filed in accordance with this policy, except as required by the policies listed below. A Board member who is a parent or standing in parental relation to a student may file a grievance in accordance with this policy but shall not vote on matters relating to that grievance. Some of these policies require appeals to be submitted in accordance with FNG after the relevant grievance process:

- Grievances alleging discrimination or harassment based on race, color, religion, sex, gender, national origin, age, disability, ancestry, marital status, veteran status, political affiliation, sexual orientation, gender identity, and/or gender expression, or any other basis prohibited by law, that adversely affects the student [see the FFH series] shall be submitted in accordance with the FFH series.
- Grievances concerning dating violence shall be submitted in accordance with the FFH series.
- Grievances concerning retaliation related to discrimination and harassment shall be submitted in accordance with the FFH series.
- Grievances concerning cyberbullying, bullying, or retaliation related to bullying shall be submitted in accordance with FFI.
- Grievances concerning failure to award credit or a final grade on the basis of attendance shall be submitted in accordance with FEC.
- Grievances concerning removal to a disciplinary alternative education program (DAEP) shall be submitted in accordance with FOC and the *Student Code of Conduct*.

- Grievances concerning expulsion shall be submitted in accordance with FOD and the *Student Code of Conduct*.
- Grievances concerning any final decisions of the gifted and talented selection committee regarding selection for or exit from the gifted program shall be submitted in accordance with EHBB.
- Grievances within the scope of Section 504, including complaints concerning identification, evaluation, or educational placement of a student with a disability, shall be submitted in accordance with FB and the procedural safeguards handbook.
- Grievances within the scope of the Individuals with Disabilities Education Act, including complaints concerning identification, evaluation, educational placement, or discipline of a student with a disability, shall be submitted in accordance with EHBAE, FOF, and the procedural safeguards handbook provided to parents of or persons standing in parental relation to all students referred to special education.
- Grievances concerning instructional resources shall be submitted in accordance with the EF series.
- Grievances concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with the CKE series.
- Grievances concerning intradistrict transfers or campus assignment shall be submitted in accordance with FDB.
- Grievances concerning admission, placement, or services provided for a homeless student shall be submitted in accordance with FDC.
- Grievances concerning disputes regarding a student's eligibility for free or reduced-priced meal programs shall be submitted in accordance with COB.

Refusal of Entry to or Ejection from District Property

Grievances to appeal refusal of entry to or ejection from District property based on Education Code 37.105 shall be filed in accordance with this policy. However, the timelines shall be adjusted as necessary to permit the grievant to address the Board in person within 90 days of filing the initial grievance, unless the grievance is resolved before the Board considers it. [See GKA(LEGAL)]

Notice to Students, Parents, and Persons Standing in Parental Relation to a Student

The District shall inform students, parents, and persons standing in parental relation to a student of this policy through appropriate District publications.

Guiding Principles

Informal Process

The Board encourages students, parents, and persons standing in parental relation to a student to discuss their concerns with the appropriate teacher, principal, or other campus 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.

Formal Process

A student, parent, or person standing in parental relation to a student may initiate the formal process described below by timely filing a written grievance form. [See FNG(EXHIBIT)]

Even after initiating the formal grievance process, grievants are encouraged to seek informal resolution of their concerns. A grievant whose concerns are resolved may withdraw a formal grievance 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.

Conflict of Interest

A person who is the subject of a grievance shall not be involved in reviewing that grievance. In such a case, the grievance shall be reviewed at a higher level.

Remand

At Level Two or Level Three, the grievance may be remanded to a lower level of review to develop a record at any time.

Freedom from Retaliation

Neither the Board nor any District employee shall unlawfully retaliate against any grievant for bringing a concern or grievance.

General Provisions

Filing

Grievance forms and appeal notices may be filed by hand-delivery, by electronic communication, including email 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. However, if a grievance is filed with an incorrect administrator but is otherwise timely, the grievance shall be directed to the appropriate administrator and considered timely. Filings submitted by electronic communication shall be timely filed if they are received on or before 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. The grievant is expected to participate in each phase of the grievance process. If the grievants are unable to attend a conference, they must seek prior written approval from the hearing officer to allow a representative to appear at the conference in their place or to seek a postponement of the hearing. Failure to obtain prior written approval shall result in dismissal of the dispute.

Withdrawal

A grievant may withdraw a dispute at any time. Once withdrawn, a dispute may not be reopened.

Unless modified by written mutual consent, a dispute shall be deemed withdrawn if a grievant fails to pursue the dispute or otherwise is deemed to be unreasonably protracting the process, including failure to attend a scheduled Level One or Level Two conference or Level Three hearing. Once withdrawn, a dispute cannot be reopened.

It is expected that a grievant will participate in each phase of the dispute resolution process.

If the grievant desires a representative to appear on the grievant's behalf, either in person or via telephone, the notice shall contain a statement indicating that the representative is authorized to proceed with the conference or hearing in the grievant's absence. Failure to attend a hearing without the prior notification described above will result in dismissal of the grievance. Once withdrawn, a dispute cannot be reopened.

Response

At Levels One and Two, "response" shall mean a written communication to the grievant from the appropriate administrator. Responses may be hand-delivered or sent by U.S. Mail to the grievant's mailing address of record. Mailed responses shall be timely if they are postmarked by U.S. Mail on or before the deadline.

Representative

"Representative" shall mean any person who or organization that is designated by the grievant to represent the grievant in the grievance process. A student may be represented by an adult at any level of the grievance.

The grievant may designate a representative through written notice to the District at any level of this process. If the grievant 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 Grievances

Grievances arising out of an event or a series of related events shall be addressed in one grievance. A grievant shall not bring separate or serial grievances arising from any event or series of events that have been or could have been addressed in a previous grievance.

Untimely Filings

All time limits shall be strictly followed unless modified by mutual written consent.

If a grievance form or appeal notice is not timely filed, the grievance may be dismissed, on written notice to the grievant, at any point during the grievance process. The grievant may appeal the dismissal by seeking review in writing within 20 days from the date of the written dismissal notice, starting at the level at which the grievance 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 grievance.

Complaint and Appeal Forms

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

Copies of any documents that support the grievance should be attached to the grievance form. If the grievant does not have copies of these documents, copies may be presented at the Level One conference. After the Level One conference, no new documents may be submitted by the grievant unless the grievant did not know the documents existed before the Level One conference.

A grievance 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.

Level One

Grievance forms must be filed:

- Within 60 days of the date the grievant first knew or had reason to know of the decision or action giving rise to the grievance, or, if the grievant sought an informal resolution, the later of:
    - 90 days from the date the grievant first knew or had reason to know of the decision or action giving rise to the grievance; or

- 30 days from the date on which the District provided information to the grievant regarding how to file the grievance.

- With the lowest level administrator who has the authority to remedy the alleged problem.

In most circumstances, grievants shall file Level One grievances with the campus principal or designee.

If the only administrator who has authority to remedy the alleged problem is the Superintendent or designee, the grievance may begin at Level Two following the procedure, including deadlines, for filing the grievance form at Level One.

If the grievance is not filed with the appropriate administrator, the receiving administrator must note the date and time the grievance form was received and immediately forward the grievance form to the appropriate administrator.

The appropriate administrator shall investigate as necessary and schedule a conference with the grievant within 10 days of when the grievance was filed. The administrator may set reasonable time limits for the conference.

Absent extenuating circumstances, the administrator shall provide the grievant a written response within 20 days following the conference. The written response shall set forth the basis of the decision and include information regarding filing an appeal, including the timeline to appeal under Education Code 26A.002 and Section 7.057, if applicable. 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 grievance.

Level Two

If the grievant did not receive the relief requested at Level One or if the time for a response has expired, the grievant may request a Level Two 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 20 days of the date of the written Level One response or, if no response was received, within 20 days of the Level One response deadline. The grievant may supplement the record with additional documents or add additional claims.

The timelines at Level Two shall run from the date the appeal request is received. The Superintendent or designee, in consultation with the Superintendent’s appropriate direct report, shall identify

the Level Two hearing officer, who may or may not be a current District employee.

At the conference, the grievant 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 conference is not an evidentiary or due process hearing. There shall be no cross-examination of witnesses. The grievant shall be allotted a specific amount of time to present their concerns. The grievant may also present witnesses and may submit any available documentation. The administration shall be allotted the same amount of time to present its position and shall be allowed to present witnesses and submit any documentation on the issues addressed at the conference.

The Superintendent or designee shall provide the grievant a written response within 20 days following the Level Two hearing, unless otherwise mutually agreed upon between the parties and the hearing officer. The written response shall set forth the basis of the decision and include information regarding filing an appeal, including the timeline to appeal under Education Code 26A.002 and Section 7.057, if applicable. 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 grievance. In the event the Level Two hearing officer's decision is adverse to the administration, the administration may appeal the decision to Level Three.

Recordings of the Level One and Level Two conferences, if any, shall be maintained with the Level One and Level Two records.

It is expected for the grievant to participate in each phase of the dispute resolution process. Therefore, if the grievant is unable to attend a conference, the grievant must seek prior written approval from the hearing officer to allow a representative to appear at the conference in the grievant's place or to seek a postponement of the hearing. Failure to obtain prior written approval will result in dismissal of the dispute.

Level Three

If the grievant did not receive the relief requested at Level Two or if the time for a response has expired, the grievant may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within 20 days of the date of the written Level Two response or, if no response was received, within 20 days of the Level

Two response deadline. The grievant may supplement the record with additional documents or add additional claims.

The Board shall not conduct a Level Three hearing until after a Level Two hearing has been convened, and a transcript of the hearing is available for the Board's review. However, the Board shall conduct the Level Three hearing within 60 days of the Level Two decision.

The Superintendent or designee shall inform the grievant of the date, time, and place of the Board meeting at which the grievance 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 grievant may request a copy of the Level Two record.

The Level Two record shall include:

- The Level One record.
- The notice of appeal from Level One to Level Two.
- The written response issued at Level Two and any attachments.
- All other documents relied upon by the administration in reaching the Level Two decision.

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 grievant notice of the nature of the evidence at least five days before the hearing.

The District shall determine whether the grievance 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 grievant and administration to each make a presentation and provide rebuttal and an opportunity for questioning by the Board. The Board shall hear the grievance 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 grievant or the grievant'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 grievance. The Board shall give notice of its decision within 30 days following the Level Three hearing.

STUDENT / PARENT GRIEVANCES

1. The Houston Independent School District (HISD) has the responsibility of maintaining a high-quality education program for its students. To achieve this objective, the District must create an atmosphere that contributes to the attainment, exchange, and application of ideas. School officials also have the responsibility of achieving an atmosphere free from disruptions and distractions that materially interfere with the work of a school or its students. Many District students have an awareness of and an involvement in issues and problems that exist in the community, the state, the nation, and the rest of the world. As students discover their rights, they should also recognize their responsibilities. The proper balance of rights and privileges with duties, responsibilities, and obligations is essential to the development of a creative school community. See References (c), (d), and (e).

DEFINITIONS

2. For the purposes of this regulation, the following definitions will apply:

GRIEVANCE

a. A grievance will be defined as a dispute or disagreement alleging a violation of federal or state laws, Board policies, or District practices.

AGGRIEVED

b. The aggrieved is the student alleging a grievance.

INFORMAL PROCESS

3. In the course of providing the best education possible in an atmosphere conducive to learning, the student may be affected by conflicting or adverse decisions that require third-party resolution. In the event the parent and or student believe such instances require a remedy, or there is a basis for a grievance, the matter should be discussed initially with the teacher. Should this procedure fail to satisfy the student and or parent, the matter may be discussed with the principal or designee with the objective of solving the issue informally. Should the informal process fail to satisfy the student or parent, he or she may file a grievance for formal processing as outlined in Board policy. See References (c) and (d).

GENERAL PROVISIONS

4. The following guidelines apply to the student grievance resolution:

AUTHORITY

a. If a grievance arises that is not under the jurisdiction of the principal or regional superintendent, the grievance will be transmitted in writing directly to the Superintendent or a designee. Grievances initiated in this fashion may begin at Level Two of the formal process. For additional guidelines and procedures, see paragraph titled LEVEL ONE in Reference (d).

MEETINGS	b.	All meetings concerning grievances will take place at reasonable hours. Students who must be absent from class will be excused providing they have confirmation from their teacher(s) that no examinations will be missed. If a grievance hearing is scheduled during the regular school day, all staff participants in the investigation and processing of the grievance will be released from regular duties and will suffer no loss of pay or other benefits. Reasonable notice of scheduled hearings will be given to all participants. At Level Three of the formal process, the HISD Board of Education may conduct a closed meeting on a parent or student complaint to the extent required or provided by law. See References (a), (b), (c), and (d).
RECORDS OF MEETINGS	c.	All documents, communications, and records dealing with a grievance will be filed separately from the student's transcript, and no notation of such grievance will appear in the file of the aggrieved unless so requested by the aggrieved. All matters pertaining to a grievance will be treated as confidential material and will not be considered in the instructional and disciplinary evaluation of the student. See Reference (c).
DISTRICT BUSINESS DAYS	d.	All days in the grievance process timeline will mean District business days. See Reference (d). District business days will mean any days that school is in session (i.e., instructional days only).
TIME LIMITS	e.	The number of days indicated at each level of the resolution procedures will be a maximum. Time limits specified may be extended in any specific instance by mutual agreement of both parties.
WITHDRAWAL	f.	A grievance may be withdrawn at any level and cannot be reopened.
REPRISALS	g.	No reprisals of any kind will be taken by or against any student in the grievance procedure by reason of such participation; however, the student may be subject to disciplinary action for any subsequent misconduct. Reprisals will not be taken against any party of interest in the grievance procedure by reason of such participation. See References (d) and (e).
LEGAL REMEDY RIGHTS	h.	No part of this process will work in such a way as to deny the complainant the right to pursue legal redress in the courts.

FORMAL RESOLUTION PROCESS

5. The formal procedures for the resolution of student grievances are outlined in Reference (d). Students and parents should use Exhibit (1) to file grievances at any level. The levels for filing are as follows:

   - Level One - complaint filed with school principal;
   - Level Two - complaint filed with Superintendent; and
   - Level Three - complaint filed with Board.

   If the aggrieved is not satisfied with the disposition of the grievance at Level Three, the aggrieved may take additional action as provided within federal or state statutes.

NOTIFICATION

6. The principal is responsible for notifying parents and students via school publication of Board policy and District practices regarding the grievance process.

CONSULTATION

7. This regulation has been through consultation (Administrative: September 11, 2007; Instructional: September 6, 2007).

MAINTENANCE RESPONSIBILITY

8. The chief academic officer, Academic Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy BE(LEGAL)

(b) Board Policy BEC(LEGAL)

(c) Board Policy FNG(LEGAL)

(d) Board Policy FNG(LOCAL)

(e) Student Code of Conduct

EXHIBIT:

(1) FNG(EXHIBIT)

STUDENT RIGHTS AND RESPONSIBILITIES FNG2
STUDENT AND PARENT COMPLAINTS/GRIEVANCES (REGULATION)

PARENT COMPLAINTS

1. Instances may occur that involve verbal or written complaints concerning teachers by parents. These are best resolved in informal conferences between parents and school personnel. See Reference (b). The following are general guidelines regarding verbal or written parental complaints against teachers:

RESPONDING TO VERBAL OR WRITTEN PARENTAL COMPLAINTS

a. The principal or designee should seek resolution of verbal or written parental complaints about a teacher informally. The principal or designee should evaluate the merits of the complaint and determine to what extent an investigation, if any, is necessary. Allegations of child abuse must also be reported immediately to the proper authorities as required by state law. See Reference (c).

MEETING BETWEEN TEACHER AND COMPLAINANT

b. The building principal or designee should make a reasonable attempt to discuss the complaint with the teacher and the complaining parent, unless prevented by law. See Reference (b). This meeting is not mandatory. While there is no requirement that a teacher have representation in this meeting, the decision is left to the discretion of the principal. If the discussion includes student information, the principal must secure parental consent for the presence of a teacher's representative in the meeting.

REGIONAL OFFICE

c. In the event that the principal cannot resolve the issue, the parent or student may call the regional superintendent or executive director at the area regional office to which the school belongs for a resolution of the complaint.

PARENT CENTER

d. If the issue is not resolved with the regional office, the parent or student may enlist the help of the Parent Center, Academic Services. The Parent Center will confer with the administrative District office to request a resolution and, if appropriate, a written response.

ADMINISTRATIVE ACTION

e. Appropriate administrative action will be taken when there is a violation of Board policy, standard District practice, or administrative directives. See Reference (a).

CONSULTATION

2. This regulation has been through consultation (Administrative: June 9, 2009; Instructional: June 6, 2009).

MAINTENANCE RESPONSIBILITY

3. The chief academic officer, Academic Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy DH(LOCAL)

(b) Board Policy FNG(LOCAL)

(c) FFG(REGULATION)

STUDENT/PARENT DISPUTE RESOLUTION FORM

LEVEL:

1. Principal or designee
2. Regional Superintendent or designee
3. Board of Education

STUDENT'S/PARENT'S NAME _____

Home Phone _____

STUDENT'S/PARENT'S ADDRESS _____
Street City State Zip

SCHOOL _____

Name, address, and telephone of representative, if any. _____

_____

Date Concern/Dispute Occurred _____ Date Filed _____

_____

Statement of Concern/Dispute:

(Include citation of statute/Board policy/District practice allegedly violated.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Remedy Requested:

Signature of Student/Parent Date

LEVEL I:

1. Date received by principal/designee:

2. Disposition by principal/designee:

Signature of Principal/designee Date
(Return original form to student/parent)
(Retain copy for your file)

I do not accept the above decision and am referring it to the next level.

Signature of Student/Parent Date

LEVEL II:

1. Date received by Regional Superintendent:

2. Disposition by Regional Superintendent:

Signature of Principal/designee Date
(Return original form to student/parent)
(Retain copy for your file)

I do not accept the above decision and am referring it to the next level.

Signature of Student/Parent Date

LEVEL III:

Date received by Board Services

DISTRITO ESCOLAR INDEPENDIENTE DE HOUSTON

FORMULARIO DE RESOLUCIÓN DE DISPUTAS

DE ESTUDIANTES/PADRES

NIVEL:

1. Director de la escuela o designado
2. Superintendente Regional o designado
3. Mesa Directiva

NOMBRE DEL ESTUDIANTE/PADRE _____

Teléfono de la casa _____

DIRECCIÓN DEL ESTUDIANTE/PADRE _____
Calle Ciudad Estado Zip

Correo electrónico _____

Escuela _____

Nombre, dirección, teléfono y correo electrónico de su representante, si tiene uno. _____

_____

Fecha en que ocurrió la disputa/surgió la inquietude_____

Fecha en que se presentó la queja _____

_____

Exposición de la disputa/inquietud:

(Incluir cita de la prescripción/normativa de la Mesa Directiva o práctica del Distrito que se alega fue infringida.)

_____

_____

_____

_____

_____

_____

_____

_____

Resolución solicitada:

Firma del estudiante/padre Fecha

NIVEL I:

1. Fecha en que la queja fue recibida por el director de la escuela/designado: _____
2. Disposición del director de la escuela/designado: _____

Firma del director/designado Fecha
(Devuelva el original al estudiante/padre.
Guarde una copia para su expediente.)

No acepto la decisión presentada aquí y voy a elevar la queja al siguiente nivel.
(Envia una copia al Departamento de Employee Relations.)

Firma del estudiante/padre Fecha

NIVEL II:

1. Fecha en que la queja fue recibida por el Superintendente Regional: _____

2. Disposición del Superintendente Regional: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Firma del Superintendente Regional Fecha
(Devuelva el original al estudiante/padre.Guarde una copia para su expediente. Envia una copia al Departamento de Employee Relations.)

_____

No acepto la decisión presentada aquí y voy a elevar la queja al siguiente nivel.
(Envia una copia al Departamento de Board Services/Mesa Directiva.)

_____

Firma del estudiante/padre Fecha

NIVEL III:

Fecha en que la queja fue recibida por Board Services/Mesa Directiva _____

Student Code of Conduct

The board shall adopt a Student Code of Conduct for a district, with the advice of its district-level committee. The Student Code of Conduct must:

1. Specify the circumstances, in accordance with Education Code Chapter 37, Subchapter A, under which a student may be removed from a classroom, campus, disciplinary alternative education program (DAEP), or vehicle owned or operated by the district.

2. Specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a DAEP, which must expressly provide that an appropriate administrator may place a student in a disciplinary alternative education program for the first-time offense of possession or use of a nicotine delivery product or e-cigarette, as defined by Health and Safety Code 161.081 [see FOB].

3. Outline conditions under which a student may be suspended, as provided by Education Code 37.005 [see FOB], or expelled, as provided by Education Code 37.007 [see FOD].

4. Specify that consideration will be given, as a factor in each decision concerning suspension, removal to a DAEP, expulsion, or placement in a juvenile justice alternative education program (JJAEP), regardless of whether the decision concerns a mandatory or discretionary action, to:

    a. Self-defense;

    b. Intent or lack of intent at the time the student engaged in the conduct;

    c. A student's disciplinary history;

    d. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;

    e. A student's status in the conservatorship of the Department of Family and Protective Services; or

    f. A student's status as a student who is homeless.

5. Provide guidelines for setting the length of removal to a DAEP or of expulsion. Except as provided by Education Code 37.007(e) (Gun-Free Schools Act [see FOD]), a district is not required to specify a minimum term of removal or expulsion.

6. Address the notification of the parent or guardian of a student's violation of the Student Code of Conduct that results in suspension, removal to a DAEP, or expulsion.

7. Prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions. "Bullying" has the meaning provided by Education Code 37.0832. [See FFI] "Harassment" means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety. "Hit list" means a list of people targeted to be harmed using a firearm, as defined by Penal Code 46.01(3) [see FNCG]; a knife, as defined by Penal Code 46.01(7) (any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument); or any other object to be used with intent to cause bodily harm.

8. Provide, as appropriate for students at each grade level, methods, including options, for:

    a. Managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district;

    b. Disciplining students; and

    c. Preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

9. Include an explanation of the provisions regarding refusal of entry to or ejection from district property under Education Code 37.105 [see GKA], including the appeal process established under 37.105(h).

10. Include a statement regarding whether the board has adopted a policy for parental involvement in school disciplinary placements [see Parental Involvement Policy, below] and, if so, the provisions of that policy.

The methods adopted must provide that a student who is enrolled in a special education program under Education Code Chapter 29, Subchapter A, may not be disciplined in a manner that results in a change in the student's educational placement for bullying, harassment, or making hit lists until an admission, review, and dismissal

(ARD) committee meeting has been held to review the conduct. [See FOF]

Education Code 37.001(a)-(b-1), (e)

Law Enforcement Duties

The law enforcement duties of peace officers, school resource officers, and security personnel [see CKE] must be included in the Student Code of Conduct. *Education Code 37.081(d)(2)*

Changes in SCOC

Once a Student Code of Conduct is promulgated, any change or amendment shall be approved by a board.

Posting

The Student Code of Conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal.

Education Code 37.001(b-1)-(c)

Notice to Parents

Each school year, a district shall provide parents with notice of and information regarding the Student Code of Conduct. *Education Code 37.001(d)*

Noncustodial Parent

A noncustodial parent may request in writing that, for the remainder of the school year in which the request is received, a district provide that parent with a copy of any written notification that is generally provided to a student's parent or guardian, relating to student misconduct under Education Code 37.006 or 37.007. A district may not unreasonably deny the request. Notwithstanding this requirement, a district shall comply with any applicable court order of which the district has knowledge. *Education Code 37.0091*

Determination of Antisemitism

In taking disciplinary action against a student for behavior that violates the Student Code of Conduct and that may reasonably be determined to have been motivated by antisemitism, a district shall use the definition of antisemitism provided by Government Code 448.001, below, including the examples referenced in that term, in determining whether the student's behavior was motivated by antisemitism. *Education Code 37.0095*

"Antisemitism" means a certain perception of Jews that may be expressed as hatred toward Jews. The term includes rhetorical and physical acts of antisemitism directed toward Jewish or non-Jewish individuals or their property or toward Jewish community institutions and religious facilities. Examples of antisemitism are included with the International Holocaust Remembrance Alliance's "Working Definition of Antisemitism" adopted on May 26, 2016. *Gov't Code 448.001(2)*

Copies to Staff

The district shall provide each teacher and administrator with a copy of Education Code Chapter 37, Subchapter A regarding student discipline and with a copy of the related local policy. *Education Code 37.018*

Campus Behavior Coordinator

A single person at each campus must be designated to serve as the campus behavior coordinator (CBC). The person may be the campus principal or any other campus administrator selected by the principal.

The CBC is primarily responsible for maintaining student discipline and the implementation of Education Code Chapter 37, Subchapter A. Additional school staff members may assist the CBC in the performance of the CBC's duties, provided that the CBC personally verifies that all aspects of Education Code Chapter 37, Subchapter A, are appropriately implemented.

Duties

Except as provided below, the specific duties of the CBC may be established by campus or district policy. Unless the policy provides otherwise, duties imposed on a campus principal or other campus administrator by Education Code Chapter 37, Subchapter A must be performed by the CBC and a power granted to a campus principal may be exercised by the CBC.

The CBC shall:

1. Monitor disciplinary referrals;
2. Report to the campus's threat assessment and safe and supportive school team [see FFB] any student who engages in conduct that contains the elements of:
    a. The offense of terroristic threat under Penal Code 22.07;
    b. The offense of unlawfully carrying weapons under Penal Code 46.02;
    c. An offense relating to prohibited weapons under Penal Code 46.05; or
    d. The offense of exhibiting, using, or threatening to exhibit or use a firearm under Education Code 37.125; and
3. Report to the campus's threat assessment and safe and supportive school team [see FFB] any concerning student behaviors or behavioral trends that may pose a serious risk of violence to the student or others.

Notice to Parents

The CBC shall promptly notify a student's parent or guardian if the student is placed into in-school or out-of-school suspension, placed

in a DAEP, expelled, or placed in a JJAEP or is taken into custody by a law enforcement officer.

A CBC must provide notice by promptly contacting the parent or guardian by telephone or in person; and making a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian.

If a parent or guardian entitled to notice has not been reached by telephone or in person by 5 p.m. of the first business day after the day the disciplinary action is taken, a CBC shall mail written notice of the action to the parent or guardian at the parent's or guardian's last known address.

If a CBC is unable or not available to promptly provide notice, the principal or other designee shall provide the notice.

Education Code 37.0012

Website Requirement

A district shall post on the district's website, for each campus, the email address and dedicated telephone number of a person clearly identified as:

1. The campus behavior coordinator; or
2. If the district has been designated as a district of innovation under Education Code Chapter 12A [see AF] and is exempt from the requirement to designate a campus behavior coordinator under the district's local innovation plan, a campus administrator designated as being responsible for student discipline.

Education Code 26.015

Parent Involvement Policy

The board may adopt a policy for parental involvement in school disciplinary placements.

If adopted, the policy must provide for:

1. The principal, CBC, or other appropriate administrator to notify the parent of a student who has been placed in a disciplinary alternative education program or expelled of the parent's right to request a behavioral agreement that specifies the responsibilities of the parent and student to be developed; and
2. If a behavioral agreement is developed and the student and the student's parent comply with the terms of the agreement, a reduction in the period of the disciplinary placement imposed on the student except as provided below.

A reduction in the period of a disciplinary placement does not entitle the student for whom the period of placement was reduced to a different disciplinary placement. The reduction in the period of a disciplinary placement is at the sole discretion of the principal, CBC, or other appropriate administrator and may be revoked or amended at any time if the student or the student's parent does not comply with the terms of the behavioral agreement.

A behavioral agreement must include in writing the specific reduction in the period of the student's disciplinary placement with which the student will be credited if the student and the student's parent comply with the terms of the behavioral agreement.

The commissioner of education shall adopt a model behavioral agreement for use by districts in developing a behavioral agreement.

Education Code 37.0014

No Unsupervised Setting

Except for students who are suspended or expelled, no student may be placed in an unsupervised setting as a result of conduct for which a student may be placed in a DAEP. *Education Code 37.008(h)*

Continuation of Disciplinary Action

If a district takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.

“Disciplinary action” means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student.

“District or school” includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.

Education Code 37.022

Opportunity to Complete Courses

If a student is placed in in-school suspension or other alternative setting other than a DAEP, a district shall offer the student the opportunity to complete, before the beginning of the next school year, each course in which the student was enrolled at the time of removal. A district may provide the opportunity by any method available, including a correspondence course, distance learning, or summer school. *Education Code 37.021* [For DAEP notice requirements, see FOCA.]

Alternative Means to Receive Coursework

A district shall provide to a student during the period of the student's suspension under Education Code 37.005, regardless of whether the student is placed in in-school or out-of-school suspension, an alternative means of receiving all coursework provided in the classes in the foundation curriculum under Education Code 28.002(a)(1) that the student misses as a result of the suspension. A district must provide at least one option for receiving the coursework that does not require the use of the internet. *Education Code 37.005(e)*

No Restriction of Recess or Physical Activity

A district employee may not, as a penalty for a student's academic performance or behavior, restrict the student's participation in:

1. Recess or other physical activity offered as part of the district's physical education curriculum for a student enrolled in kindergarten or in a grade level below grade six; or
2. Physical activity offered as part of the district's physical education curriculum for a student enrolled in grade level six, seven, or eight.

Education Code 28.002(l-4)

Seclusion

A district employee or volunteer or an independent contractor of a district may not place a student in seclusion. *Education Code 37.0021(c)*

"Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

1. Is designed solely to seclude a person; and
2. Contains less than 50 square feet of space.

Education Code 37.0021(b)(2)

This section and any rules or procedures adopted under this section apply to a peace officer only if the peace officer:

1. Is employed or commissioned by a school district; or
2. Provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency.

Education Code 37.0021(h)

Exceptions

This prohibition on seclusion does not apply to:

1. A peace officer performing law enforcement duties; or

2. An educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Law Enforcement Duties

"Law enforcement duties" means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure.

Education Code 37.0021(b)(4), (g)

[For information on seclusion involving students in special education, see FOF.]

Officer or Security Personnel Use of Restraint or Taser

"Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.

Definitions

"Taser" means a device manufactured, sold, or distributed by Taser International, Incorporated, that is intended, designed, made, or adapted to incapacitate a person by inflicting an electrical charge through the emission of a projectile or conductive stream. The term, for purposes of this provision, includes a similar device manufactured, sold, or distributed by another person.

Prohibition

A peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity may not restrain or use a chemical irritant spray or Taser on a student enrolled in fifth grade or below unless the student poses a serious risk of harm to the student or another person.

Education Code 37.0021(b)(1), (b)(5), (j)

[For information on restraint involving students in special education, see FOF.]

Restraint Reports

A district shall report electronically to the Texas Education Agency (TEA), in accordance with standards provided by commissioner rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. The report must be consistent with the requirements adopted by commissioner rule for reporting the use of restraint involving students with disabilities [see FOF]. *Education Code 37.0021(i)*

Corporal Punishment

If the board adopts a policy under Education Code 37.001(a)(8) under which corporal punishment is permitted as a method of student discipline, a district educator may use corporal punishment to discipline a student unless the student's parent or guardian or other person having lawful control over the student has previously pro-

vided a written, signed statement prohibiting the use of corporal punishment as a method of student discipline. *Education Code 37.0011(b)*

Parent Statement

To prohibit the use of corporal punishment as a method of student discipline, each school year a student's parent or guardian or other person having lawful control over the student must provide a separate written, signed statement to the board in the manner established by the board. The student's parent or guardian or other person having lawful control over the student may revoke the statement provided to the board at any time during the school year by submitting a written, signed revocation to the board in the manner established by the board. *Education Code 37.0011(c)-(d)*

Definition

"Corporal punishment" means the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline. The term does not include physical pain caused by reasonable physical activities associated with athletic training, competition, or physical education or the use of restraint as authorized under Education Code 37.0021 [see FOF]. *Education Code 37.0011(a*)

Use of Force to Maintain Discipline

The use of force, but not deadly force, against a student is justified if the teacher or administrator is entrusted with the care, supervision, or administration of the student when, and to the degree the teacher or administrator reasonably believes the force is necessary, to further the purpose of education or to maintain discipline in a group. *Penal Code 9.62*

Aversive Techniques

A district or district employee or volunteer or an independent contractor of a district may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied, to a student.

"Aversive technique" means a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. The term includes a technique or intervention that:

1. Is designed to or likely to cause physical pain, other than an intervention or technique permitted under Education Code 37.0011 [see Corporal Punishment, above];
2. Notwithstanding the above corporal punishment provisions, is designed to or likely to cause physical pain through the use of electric shock or any procedure that involves the use of pressure points or joint locks;
3. Involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student's face;

4. Denies adequate sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom facility;

5. Ridicules or demeans the student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse;

6. Employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;

7. Impairs the student's breathing, including any procedure that involves:

   a. Applying pressure to the student's torso or neck; or

   b. Obstructing the student's airway, including placing an object in, on, or over the student's mouth or nose or placing a bag, cover, or mask over the student's face;

8. Restricts the student's circulation;

9. Secures the student to a stationary object while the student is in a sitting or standing position;

10. Inhibits, reduces, or hinders the student's ability to communicate;

11. Involves the use of a chemical restraint;

12. Constitutes a use of timeout that precludes the student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals included in the student's individualized education program, including isolating the student by the use of physical barriers; or

13. Except as provided below, deprives the student of the use of one or more of the student's senses.

Education Code 37.0023(a)-(b)

An aversive technique that deprives the student of the use of one or more of the student's senses may be used if the technique is executed in a manner that:

1. Does not cause the student discomfort or pain; or

2. Complies with the student's individualized education program or behavior intervention plan.

Nothing in this section may be construed to prohibit a teacher from removing a student from class under Education Code 37.002. [See FOA]

Education Code 37.0023(c)-(d)

Videotapes and Recordings

A district employee or contractor is not required to obtain the consent of a child's parent before the employee or contractor may make a videotape of the child or authorize the recording of the child's voice if the videotape or recording is to be used only for purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses. *Education Code 26.009(b)(1)*

Teacher Documentation

A teacher may document any conduct by a student that does not conform to the Student Code of Conduct and may submit that documentation to the principal. A district may not discipline a teacher on the basis of the submitted documentation. *Education Code 37.002(b-1)*

Reports

Disciplinary Alternative Education Programs

For each placement in a disciplinary alternative education program (DAEP), a district shall annually report to the commissioner:

1. Information identifying the student, including the student's race, sex, and date of birth, that will enable TEA to compare placement data with information collected through other reports;
2. Information indicating whether the placement was based on:
    a. Conduct violating the Student Code of Conduct;
    b. Conduct for which a student may be removed from class by a teacher [see FOA and the Student Code of Conduct];
    c. Conduct for which placement in a DAEP is required [see FOC and the Student Code of Conduct]; or
    d. Conduct occurring while a student was enrolled in another district and for which placement in a DAEP is permitted by Education Code 37.008(j);
3. The number of full or partial days the student was assigned to the program and the number of full or partial days the student attended the program; and
4. The number of placements that were inconsistent with the guidelines on length of placement in the Student Code of Conduct.

Expulsions

For each expulsion, a district shall annually report to the commissioner:

1. Information identifying the student, including the student's race, sex, and date of birth, that will enable TEA to compare placement data with information collected through other reports;
2. Information indicating whether the expulsion was based on:
    a. Conduct for which expulsion is required, including information specifically indicating whether a student was expelled for bringing a firearm to school; or
    b. Conduct for which expulsion is permitted;
3. The number of full or partial days the student was expelled;
4. Information indicating whether:
    a. The student was placed in a JJAEP;
    b. The student was placed in a DAEP; or
    c. The student was not placed in a JJAEP or other alternative education program; and
5. The number of expulsions that were inconsistent with the guidelines on length of expulsion in the Student Code of Conduct.

Out-of-School Suspensions

For each out-of-school suspension under Education Code 37.005, a district shall report:

1. Information identifying the student, including the student's race, sex, and date of birth, that will enable TEA to compare placement data with information collected through other reports;
2. Information indicating the basis for the suspension;
3. The number of full or partial days the student was suspended; and
4. The number of out-of-school suspensions that were inconsistent with the guidelines included in the Student Code of Conduct under Education Code 37.001(a)(3) [see Student Code of Conduct, item 3, above].

Education Code 37.020

Student Code of Conduct

The District's rules of discipline are maintained in the Board-adopted *Student Code of Conduct* and are established to support an environment conducive to teaching and learning.

Rules of conduct and discipline shall not have the effect of discriminating on the basis of age, race, color, ancestry, national origin, sex, gender, handicap or disability, marital status, religion, veteran status, political affiliation, sexual orientation, gender identity, and/or gender expression, or any other basis prohibited by law.

At the beginning of the school year and throughout the school year as necessary, the *Student Code of Conduct* shall be:

1. Posted and prominently displayed at each campus or made available for review in the principal's office, as required by law; and
2. Made available on the District's website and/or as a hard copy to students, parents, teachers, administrators, and others upon request.

Revisions

Revisions to the *Student Code of Conduct* approved by the Board during the year shall be made available promptly to students and parents, teachers, administrators, and others.

Extracurricular Standards of Behavior

With the approval of the principal and Superintendent, sponsors and coaches of extracurricular activities may develop and enforce standards of behavior that are higher than the District-developed *Student Code of Conduct* and may condition membership or participation in the activity on adherence to those standards. Extracurricular standards of behavior may take into consideration conduct that occurs at any time, on or off school property.

A student shall be informed of any extracurricular behavior standards at the beginning of each school year or when the student first begins participation in the activity. A student and his or her parent shall sign and return to the sponsor or coach a statement that they have read the extracurricular behavior standards and consent to them as a condition of participation in the activity.

Standards of behavior for an extracurricular activity are independent of the *Student Code of Conduct*. Violations of these standards of behavior that are also violations of the *Student Code of Conduct* may result in independent disciplinary actions.

A student may be removed from participation in extracurricular activities or may be excluded from school honors for violation of extracurricular standards of behavior for an activity or for violation of the *Student Code of Conduct*.

"Parent" Defined

Throughout the *Student Code of Conduct* and discipline policies, the term "parent" includes a parent, legal guardian, or other person having lawful control of the student.

General Discipline Guidelines

These guidelines do not replace or supersede FOA(LEGAL), which allows a teacher to remove a student from the classroom. Additionally, these guidelines extend to CNA4(REGULATION) regarding enforcement of student discipline pertaining to student transportation.

A District employee shall adhere to the following general guidelines when imposing discipline:

1. A student shall be disciplined when necessary to improve the student's behavior, to maintain order, or to protect other students, school employees, or property.
2. A student shall be treated fairly and equitably. Discipline shall be based on an assessment of the circumstances of each case. Factors to consider shall include:
    a. The seriousness of the offense;
    b. The student's age;
    c. The frequency of misconduct;
    d. The student's attitude;
    e. The potential effect of the misconduct on the school environment;
    f. Requirements of Chapter 37 of the Education Code; and
    g. The *Student Code of Conduct* adopted by the Board.
3. No student shall be informally sent home. No student prior to third grade shall be suspended, placed into a disciplinary alternative setting, or expelled, except as required by law. Disciplinary actions that remove students from their school setting shall be used as a last resort for other elementary students in third through fifth grades.
4. Before a student under age 18 is assigned to detention outside regular school hours, notice shall be given to the student's parent to inform him or her of the reason for the detention and permit arrangements for necessary transportation.

All school-based faculty and staff shall be trained annually in methodologies to provide a positive school climate, crisis prevention, and strategies for de-escalating disciplinary challenges.

Additionally, school-based faculty and staff shall be trained periodically on the issues of equity based on age, race, color, ancestry, national origin, gender, handicap or disability, marital status, religion, veteran status, political affiliation, sexual orientation, gender identity, and/or gender expression as applied to the population served on that campus. Annually, all school principals shall publicly share disaggregated disciplinary data and the plans for improving school climate/reducing student misbehavior and rectifying inequities.

Corporal Punishment

The Board prohibits the use of corporal punishment in the District. Students shall not be spanked, paddled, or subjected to other physical force as a means of discipline for violations of the *Student Code of Conduct*.

Note: A District employee may restrain a student with a disability who receives special education services only in accordance with law. [See FOF(LEGAL)]

Physical Restraint

Within the scope of an employee's duties, a District employee may physically restrain a student if the employee reasonably believes restraint is necessary in order to:

- Protect a person, including the person using physical restraint, from physical injury.
- Obtain possession of a weapon or other dangerous object.
- Protect property from serious damage.
- Remove a student refusing a lawful command of a school employee from a specific location, including a classroom or other school property, in order to restore order or to impose disciplinary measures.

Video and Audio Monitoring

Video and audio recording equipment may be used for safety purposes to monitor student behavior on District property.

When video and audio recording equipment is in use, the District shall post signs notifying students and parents about the District's use of video and audio recording equipment. Students shall not be notified when the equipment is turned on.

Use of Recordings

The principal shall review recordings as needed, and evidence of student misconduct shall be documented. A student found to be in violation of the District's *Student Code of Conduct* shall be subject to appropriate discipline.

Access to Recordings	Recordings shall remain in the custody of the campus principal and shall be maintained as required by law. A parent or student who wishes to view a recording in response to disciplinary action taken against the student may request such access under the procedures set out by law. [See FL(LEGAL)]

Mandatory Removal by a Teacher

A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program (DAEP) or expulsion, as appropriate, a student who engages in conduct described in Education Code 37.006 (removal) or 37.007 (expulsion). [See FOC and FOD] *Education Code 37.002(d)*

Routine Referral

A teacher may send a student to the campus behavior coordinator's (CBC) office to maintain effective discipline in the classroom. The CBC shall respond by employing appropriate discipline management techniques, consistent with the Student Code of Conduct that can reasonably be expected to improve the student's behavior before returning the student to the classroom. If the student's behavior does not improve, the CBC shall employ alternative discipline management techniques, including any progressive interventions designated as the responsibility of the CBC in the Student Code of Conduct. *Education Code 37.002(a)* [See FO]

Discretionary Removal

A teacher may remove from class a student who:

1. Repeatedly interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn;
2. Demonstrates behavior that is unruly, disruptive, or abusive toward the teacher, another adult, or another student; or
3. Engages in conduct that constitutes bullying, as defined by Education Code 37.0832 [see FFI].

Education Code 37.002(b)

Subject to requirements related to teaching and discussing certain debated and controversial topics under Education Code 28.0022(a)(2) and (d) [see EMB], a teacher may remove a student from class based on a single incident of behavior described above. *Education Code 37.002(b-3)*

Reporting Classroom Removals

A student who is sent to the campus behavior coordinator's or other administrator's office under a routine referral or a discretionary removal, as described above, is not considered to have been removed from the classroom for the purposes of reporting data through the Public Education Information Management System (PEIMS) or other similar reports required by state or federal law. *Education Code 37.002(e)*

[See DNA for information about teacher evaluations and disciplinary referrals.]

A teacher, campus behavior coordinator, or other appropriate administrator shall notify a parent of a student of the removal of a student from class described above. *Education Code 37.002(b-2)*

Placement of Student

If a teacher removes a student from class under the provisions above, the principal may place the student in another appropriate classroom, in-school suspension, or DAEP [see FOC]. *Education Code 37.002(c)*

Conference by Third Day Required

Not later than the third class day after the day on which a student is removed from class by the teacher under the above provision or by the school principal or other appropriate administrator under the Student Code of Conduct, the campus behavior coordinator or other appropriate administrator shall schedule a conference among the campus behavior coordinator or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the campus behavior coordinator, after consideration of the mitigating factors (see below), shall order the placement of the student for a period consistent with the Student Code of Conduct. *Education Code 37.009(a)*

Appeals

Appeal of Removal

A student may appeal the student's removal from class described above to:

1. The school's placement review committee [see Placement Review Committee, below]; or
2. The campus's threat assessment and safe and supportive school team, in accordance with a district policy providing for such an appeal to be made to the team.

Education Code 37.002(e-1)

No Appeal of Board Decision

If district policy allows a student to appeal to the board or the board's designee, a decision of the campus behavior coordinator or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. *Education Code 37.009(a)*

Placement Length

The period of the placement may not exceed one year unless, after a review, the district determines that the student is a threat to the safety of other students or to district employees. The student may

not be returned to the regular class pending the required conference. *Education Code 37.009(a)*

Mitigating Factors

The CBC must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct. *Education Code 37.009(a)*

[See Student Code of Conduct, item 4, at FO(LEGAL) for mitigating factors.]

Prohibitions on Activities

The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.002(c)*

Note: A power granted to a campus principal under Education Code Chapter 37, Subchapter A may be exercised by the CBC.

Return to Class

The principal may not return the student to the class of the teacher who removed the student without the teacher's written consent, unless the placement review committee determines that such placement is the best or only alternative available and, not later than the third class day after the day on which the student was removed from class, a conference in which the teacher has been provided an opportunity to participate has been held. [See Conference by Third Day Required, above]

Return to Class Plan

The principal may not return the student to that teacher's class unless the teacher provides written consent for the student's return or a return to class plan has been prepared for that student. The principal may only designate an employee of the school whose primary duties do not include classroom instruction to create a return to class plan. A return to class plan must be created before or at the conference described by that subsection. A plan created before the conference must be discussed at the conference.

The commissioner of education shall adopt a model return to class plan for use by a district in creating a return to class plan for a student.

Education Code 37.002(c), (c-1), (c-2)

Return After Assault

If the teacher removed the student from class because the student engaged in the elements of an offense listed in Education Code 37.007(a)(2)(A) or (a)(4) (assault, sexual assault, assault against a district employee or volunteer) against the teacher, the student

may not be returned to the teacher's class without the teacher's written consent. The teacher may not be coerced to consent.

Education Code 37.002(c), (d)

Placement Review Committee

Each school shall establish a three-member committee to determine the placement of a student when a teacher refuses the return of a student to the teacher's class. The committee shall make recommendations to the district regarding readmission of expelled students.

Composition

Committee members shall be appointed as follows:

1. Campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and
2. The principal shall choose one member from the professional staff of a campus.

The teacher refusing to readmit the student may not serve on the committee.

Education Code 37.003

Right to Appeal

The principal, campus behavior coordinator, or other appropriate administrator shall notify a student who has been removed from class and the student's parent of the student's right to appeal the decision of the committee. [See Appeals, above] *Education Code 37.002(f-1)*

Removal by School Bus Driver

The driver of a school bus transporting students to or from school or a school-sponsored or school-related activity may send a student to the principal's office to maintain effective discipline on the school bus.

The principal shall respond by employing appropriate discipline management techniques consistent with the Student Code of Conduct.

Education Code 37.0022

Note: See FOF for provisions concerning students with disabilities.

Suspension Authorized

The principal or other appropriate administrator may suspend a student who engages in conduct identified in the Student Code of Conduct as conduct for which a student may be subject to an in-school or out-of-school suspension. *Education Code 37.005(a)*

In-School Suspension

An in-school suspension under this section is not subject to any time limit. *Education Code 37.005(b)*

No Time Limit

Placement Review

The principal or other appropriate administrator shall review the in-school suspension of a student at least once every 10 school days after the date the suspension begins to evaluate the educational progress of the student and to determine if continued in-school suspension is appropriate. If the principal or other appropriate administrator determines that continued in-school suspension is appropriate, the principal or other appropriate administrator shall document the determination. *Education Code 37.005(b-1)*

Support Services

The district shall provide a student subject to an in-school suspension with appropriate behavioral support services and comparable educational services as the student would receive in the classroom.

If the student receives special education services, the student must continue to receive special education and related services specified in the student's individualized education program and have an opportunity to progress in the general curriculum. *Education Code 37.005(b-2)*

Out-of-School Suspension

An out-of-school suspension may not exceed three school days. *Education Code 37.005(b)*

Maximum Length

[See FO for provisions regarding coursework to students in suspension.]

Students Below Grade 3

A student who is enrolled in a grade level below grade 3 may not be placed in out-of-school suspension unless while on school property or while attending a school-sponsored or school-related activity on or off of school property, the student engages in:

1. Conduct that contains the elements of an offense related to weapons under Penal Code 46.02 or 46.05;
2. Conduct that threatens the immediate health and safety of other students in the classroom;
3. Documented conduct that results in repeated or significant disruption to the classroom; or
4. Selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of:

a. Marihuana or a controlled substance, as defined by Health and Safety Code Chapter 481, or by 21 U.S.C. Section 801 et seq.;

b. A dangerous drug, as defined by Health and Safety Code Chapter 483; or

c. An alcoholic beverage, as defined by Alcoholic Beverage Code 1.04.

Education Code 37.005(c)

Students Who Are Homeless

A district may not place a student who is homeless in out-of-school suspension unless the student engages in conduct described at items 1–4, above, while on school property or while attending a school-sponsored or school-related activity on or off of school property. The campus behavior coordinator may coordinate with the district's homeless education liaison to identify appropriate alternatives to out-of-school suspension for a student who is homeless. In Education Code 37.005(d), "student who is homeless" has the meaning assigned to the term "homeless children and youths" under 42 U.S.C. Section 11434a. *Education Code 37.005(d)*

Alternative Placement Request

On receiving a written request from the student's parent, the principal or other appropriate administrator may at the principal's or other appropriate administrator's sole discretion reassign a student placed in out-of-school suspension to an in-school suspension if the student's parent demonstrates through supporting information and documentation that the parent is unable to provide suitable supervision for the student during school hours during the period of the suspension.

The alternative placement provided by this provision may be used only in extenuating circumstances and may not be used as a routine replacement for out-of-school suspension.

The district shall maintain documentation of each reassignment under this subsection, including the parent's request, the reason for the parent's unavailability, and the supporting information and documentation.

Education Code 37.005(c-2)

Positive Behavior Program

A district may develop and implement a program, in consultation with campus behavior coordinators employed by the district [see FO] and representatives of a regional education service center, that provides a disciplinary alternative for a student enrolled in a grade level below grade 3 who engages in conduct described by Education Code 37.005(a) [at Suspension Authorized, above] and

is not subject to 37.005(c) [at Students below Grade 3, above]. The program must:

1. Be age-appropriate and research-based;
2. Provide models for positive behavior;
3. Promote a positive school environment;
4. Provide alternative disciplinary courses of action that do not rely on the use of in-school suspension, out-of-school suspension, or placement in a disciplinary alternative education program to manage student behavior; and
5. Provide behavior management strategies including:
    a. Positive behavioral intervention and support;
    b. Trauma-informed practices;
    c. Social and emotional learning;
    d. A referral for services, as necessary; and
    e. Restorative practices.

A district may annually conduct training for district staff on the program adopted.

Education Code 37.0013

Table of Contents

Removal Under Student Code of Conduct....3
Mandatory Placement in DAEP....3
School-Related Misconduct....3
Retaliation....4
Conduct Unrelated to School....4
Sexual Assault of Another Student....7
Permissive Removal....8
Non-Title 5 Felony....8
Bullying....8
Disruption....8
E-Cigarette Possession or Use....9
One Year After Conduct....9
Certain Organization and Gang Membership and Solicitation....9
Older Students....9
Placement of Younger Students....9
Students Younger Than Six....9
Process for Removal....10
Conference....10
Mitigating Factors....10
Order....10
Appeal....10
Right to Request a Special Education Evaluation....10
Term of Removal....10
Beyond Grading Period or 60 Days....11
Beyond End of School Year....11
Order of Removal....11
DAEP at Capacity....12
Placement of Student Who Engaged in Violent Conduct....12
Determination of Violent Conduct....12
Completion of Proceedings Upon Withdrawal....14
Enrollment in Another District....14
Out-of-State Placement....15
Court-Ordered Placement....15
School Activities....16

Placement After Court Disposition 16
Not Guilty/ Insufficient Evidence/Charges Dropped 16
Appeal After Placement Upheld 17
120-Day Review of Status 17
Additional Proceedings 17
Reporting 17

Removal Under Student Code of Conduct

The Student Code of Conduct must specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program (DAEP). *Education Code 37.001(a)(2)*

Mandatory Placement in DAEP

A student shall be removed from class and placed in a DAEP if the student engages in conduct described in Education Code 37.006 that requires placement, subject to the requirements of Education Code 37.009(a) [see Process for Removal and Mitigating Factors, below]. *Education Code 37.006*

[For additional factors that must be considered in each decision concerning suspension, removal to a DAEP, expulsion, or placement in a juvenile justice alternative education program (JJAEP), see FO and the Student Code of Conduct.]

School-Related Misconduct

A student shall be removed from class and placed in a DAEP if the student engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Penal Code 42.06, or terroristic threat under Penal Code 22.07.

A student shall also be removed from class and placed in a DAEP if the student commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off school property:

1. Engages in conduct punishable as a felony.
2. Engages in conduct that contains the elements of assault, under Penal Code 22.01(a)(1).
3. Sells, gives, or delivers to another person or possesses, uses, or is under the influence of:
    a. A controlled substance, as defined by the Texas Controlled Substances Act, Health and Safety Code Chapter 481, or by 21 U.S.C. 801, et seq., excluding marijuana, as defined by Health and Safety Code 481.002, or tetrahydrocannabinol, as defined by Department of Public Safety rule;
    b. A dangerous drug, as defined by the Texas Dangerous Drug Act, Health and Safety Code Chapter 483.
4. Possesses, uses, or is under the influence of, or sells, gives, or delivers to another person marijuana or tetrahydrocannabinol, as defined above;
5. Sells, gives, or delivers to another person an e-cigarette, as defined by Health and Safety Code 161.081 [see FNCD];

6. Sells, gives, or delivers to another person an alcoholic beverage, as defined by Alcoholic Beverage Code 1.04, or commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage.

7. Engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Health and Safety Code 485.031 through 485.034.

8. Engages in conduct that contains the elements of the offense of public lewdness under Penal Code 21.07.

9. Engages in conduct that contains the elements of the offense of indecent exposure under Penal Code 21.08.

10. Engages in conduct that contains the elements of the offense of harassment under Penal Code 42.07(a)(1), (2), (3), or (7) against an employee of the district.

Education Code 37.006(a)

Exception Removal to a DAEP for school-related misconduct is not required if the student is expelled for the same conduct. *Education Code 37.006(m)*

Retaliation A student shall be removed from class and placed in a DAEP if the student engages in conduct on or off school property against any school employee or volunteer as defined by Education Code 22.053 containing the elements of:

1. Retaliation under Penal Code 36.06; or

2. Harassment under Penal Code 42.07.

Education Code 37.006(b)

Conduct Unrelated to School In addition to the circumstances listed above, a student shall be removed from class and placed in a DAEP based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

1. The student receives deferred prosecution under Family Code 53.03 for conduct defined as any of the following offenses:

   a. A felony offense under Penal Code Title 5;

   b. The offense of deadly conduct under Penal Code 22.05;

   c. The felony offense of aggravated robbery under Penal Code 29.03;

d. The offense of disorderly conduct involving a firearm under Penal Code 42.01(a)(7) or (8); or

e. The offense of unlawfully carrying weapons under Penal Code 46.02, except for an offense punishable as a Class C misdemeanor;

2. A court or jury finds that the student has engaged in delinquent conduct under Family Code 54.03 for conduct defined as an offense listed in item 1; or

3. The superintendent or designee has a reasonable belief that the student has engaged in conduct defined as an offense listed in item 1.

Education Code 37.006(c)

Reasonable Belief

In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense, a superintendent or a superintendent's designee may consider all available information and must consider the information furnished under Code of Criminal Procedure Article 15.27 other than information requested under Code of Criminal Procedure Article 15.27(k-1). *Education Code 37.006(e); Code of Criminal Procedure 15.27(a)* [See GRAA]

Title 5 Felonies

The following are felony offenses listed in Penal Code, Title 5, Offenses Against the Person.

1. Murder. *Penal Code 19.02*

2. Capital Murder. *Penal Code 19.03*

3. Manslaughter. *Penal Code 19.04*

4. Criminally Negligent Homicide. *Penal Code 19.05*

5. Unlawful Restraint, if:

   a. The person restrained was younger than 17 years of age; or

   b. The actor recklessly exposes the victim to a substantial risk of serious bodily injury; restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty; or while in custody restrains any other person. *Penal Code 20.02*

6. Kidnapping. *Penal Code 20.03*

7. Aggravated Kidnapping. *Penal Code 20.04*
8. Smuggling of Persons. *Penal Code 20.05*
9. Continuous Smuggling of Persons. *Penal Code 20.06*
10. Trafficking of Persons. *Penal Code 20A.02*
11. Continuous Trafficking of Persons. *Penal Code 20A.03*
12. Continuous Sexual Abuse of Young Child or Disabled Individual. *Penal Code 21.02*
13. Bestiality. *Penal Code 21.09*
14. Indecency with a Child. *Penal Code 21.11*
15. Improper Relationship between Educator and Student. *Penal Code 21.12*
16. Invasive Visual Recording. *Penal Code 21.15*
17. Unlawful Disclosure or Promotion of Intimate Visual Material. *Penal Code 21.16*
18. Voyeurism, if the victim was younger than 18 years of age at the time of the offense. *Penal Code 21.17*
19. Sexual Coercion. *Penal Code 21.18*
20. Assault, if the offense is punishable as a felony. *Penal Code 22.01*
21. Sexual Assault. *Penal Code 22.011*
22. Aggravated Assault. *Penal Code 22.02*
23. Aggravated Sexual Assault. *Penal Code 22.021*
24. Injury to a Child, Elderly Individual, or Disabled Individual. *Penal Code 22.04*
25. Abandoning or Endangering a Child, Elderly Individual, or Disabled Individual. *Penal Code 22.041*
26. Deadly Conduct, if the person knowingly discharges a firearm at or in the direction of one or more individuals, or at or in the direction of a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied. *Penal Code 22.05*
27. Terroristic Threat, if the actor threatens to commit any offense involving violence to any person or property with intent to:

a. Place any person in fear of imminent serious bodily injury if the actor knows the person is a peace officer or judge;

b. Prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place if the prevention or interruption causes pecuniary loss of $1,500 or more to the owner;

c. Cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;

d. Place the public or a substantial group of the public in fear of serious bodily injury; or

e. Influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision. *Penal Code 22.07*

28. Aiding Suicide, if the conduct causes suicide or attempted suicide that results in serious bodily injury. *Penal Code 22.08*

29. Tampering with Consumer Product. *Penal Code 22.09*

30. Harassment by Persons in Certain Facilities or of Public Servant. *Penal Code 22.11*

Sexual Assault of Another Student

A student shall be removed from class and placed in a DAEP or juvenile justice alternative education program (JJAEP) if:

1. The student was convicted of, received adjudication for, or was placed on probation for sexual assault of another student who was a young child or disabled individual while the students were assigned to the same campus, regardless of whether the assault occurred on or off school property;

2. The parent of the victim of the assault has requested that the student be transferred to a campus other than that to which the victim is assigned; and

3. There is only one campus in a district serving the grade level in which the student is enrolled.

Education Code 25.0341, 37.0051(a) [See FDE at Sexual Assault Transfer—Transfer of Assailant]

A limitation imposed by Education Code Chapter 37 on the length of placement in a DAEP or a JJAEP does not apply to a placement under this provision. *Education Code 37.0051(b)*

Permissive Removal

Non-Title 5 Felony

A student may be removed from class and placed in a DAEP based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

1. The superintendent or designee has a reasonable belief [see Reasonable Belief, above] that the student has engaged in conduct defined as a felony offense other than aggravated robbery under Penal Code 29.03, or those offenses listed in Penal Code Title 5 [see above at Title 5 Felonies]; and
2. The continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

Education Code 37.006(d)-(e)

Bullying

A student may be removed from class and placed in a DAEP if the student:

1. Engages in bullying that encourages a student to commit or attempt to commit suicide;
2. Incites violence against a student through group bullying; or
3. Releases or threatens to release intimate visual material of a minor or student who is 18 years of age or older without the student's consent.

Nothing in this provision exempts a school from reporting a finding of intimate visual material of a minor.

Definitions

Bullying

"Bullying" has the meaning assigned by Education Code 37.0832. [See FFI]

Intimate Visual Material

"Intimate visual material" has the meaning assigned by Civil Practice and Remedies Code 98B.001.

Education Code 37.0052

Disruption

A student may be removed from class and placed in a disciplinary alternative education program if the student:

1. Engages in conduct that contains the elements of the offense of disruptive activities under Education Code 37.123;
2. Engages in conduct that contains the elements of the offense of disruption of classes under Education Code 37.124, only if:
    a. The student is 12 years of age or older at the time of the conduct; and

b. The conduct is intentional and repeated.

Education Code 37.006(d), (d-1); 37.124(d)

E-Cigarette Possession or Use

A student may be removed from class and placed in a disciplinary alternative education program if the student possesses or uses an e-cigarette, as defined by Health and Safety Code 161.081.

If a student who possesses or uses an e-cigarette is not placed in a disciplinary alternative education program for the first-time offense, the student shall be placed in in-school suspension for a period of at least 10 school days. [For requirements related to in-school suspension, see FOB.]

Education Code 37.006(d)

One Year After Conduct

A principal or other appropriate administrator may, but is not required to, remove a student to a DAEP for off-campus conduct, for which removal would otherwise be required, if the principal or other appropriate administrator did not have knowledge of the conduct before the first anniversary of the date the conduct occurred. *Education Code 37.006(n)*

Certain Organization and Gang Membership and Solicitation

A board or an educator shall recommend placing in DAEP any student who commits the misdemeanor offenses described in Education Code 37.121(a) and (c), regarding membership in or solicitation to join a public school fraternity, sorority, secret society, or gang [see FNCC]. *Education Code 37.121(b)*

Older Students

A person who is 21 years of age or older and is admitted by a district for the purpose of completing the requirements for a diploma is not eligible for placement in a DAEP if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in such conduct, the district shall revoke the student's admission. *Education Code 25.001(b-1)*

Placement of Younger Students

A student who is younger than 10 shall be removed from class and placed in a DAEP if the student engages in conduct for which expulsion would be required by Section 37.007. *Education Code 37.006(f), .007(e)* [See FOD]

Students Younger Than Six

Notwithstanding any other provision of the Education Code, a student who is younger than six years of age may not be removed from class and placed in a DAEP, except that a student younger than six years of age who has been expelled pursuant to the Gun Free Schools Act [see FOD] shall be provided educational services in a DAEP. *Education Code 37.006(l), .007(e)(2)*

Process for Removal

Conference

Not later than the third class day after a student is removed by a teacher or by the school principal or other appropriate administrator, the campus behavior coordinator (CBC) or other appropriate administrator shall schedule a conference among the CBC or other appropriate administrator, the student's parent or guardian, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular class pending the conference.

Mitigating Factors

Before ordering removal, the CBC must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action.

Order

Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the CBC, after considering any mitigating factors under Education Code 37.001(a)(4) [see FO], shall order the placement of the student for a period consistent with the Student Code of Conduct.

Appeal

If district policy allows a student to appeal to the board or the board's designee a decision of the CBC or other appropriate administrator, the decision of the board or the board's designee is final and may not be appealed.

Education Code 37.009(a) [See Student Code of Conduct]

Right to Request a Special Education Evaluation

On the placement of a student in a DAEP, the district shall provide information to the student's parent or person standing in parental relation to the student regarding the process for requesting a full individual and initial evaluation of the student under Education Code 29.004 [see EHBAA]. *Education Code 37.006(p)*

Term of Removal

The period of the placement after removal may not exceed one year unless, after a review, a district determines that the student is a threat to the safety of other students or to district employees. *Education Code 37.009(a)*

A board or designee shall set a term for a student's placement in a DAEP. If the period of placement is inconsistent with the guidelines in the Student Code of Conduct, the order must give notice of the inconsistency. The period of placement in a DAEP may not exceed

one year unless, after a review, a district determines that the student is a threat to the safety of other students or to district employees or extended placement is in the best interest of the student. *Education Code 37.009(d)*

Beyond Grading Period or 60 Days

If placement in a DAEP is to extend beyond 60 days or the end of the next grading period, whichever is earlier, the student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before a board or designee.

No Appeal

Any decision of a board or designee concerning placement beyond 60 days or the end of the next grading period is final and cannot be appealed.

Education Code 37.009(b)

Beyond End of School Year

Before a student may be placed in a DAEP for a period that extends beyond the end of the school year, a board or designee must determine that:

1. The student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or another individual; or
2. The student has engaged in serious or persistent misbehavior that violates the Student Code of Conduct.

Education Code 37.009(c)

Order of Removal

A board or designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a DAEP. *Education Code 37.009(g)*

Not later than the second business day after the date of the removal conference, a board or designee shall deliver a copy of the order placing the student in a DAEP and any information required under Family Code 52.04 to the authorized officer of the juvenile court in the county in which the juvenile resides. *Education Code 37.010(a)*

Activities

The terms of a placement under Education Code 37.006 must prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.006(g)*

In addition to any notice required under Code of Criminal Procedure 15.27 [see GRAA], a principal or designee shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in conduct for which DAEP placement must or may be ordered.

Each educator shall keep the information confidential from any person not entitled to the information, except that the educator may share the information with the student's parent or guardian as provided by state or federal law. An educator's certificate may be suspended or revoked for intentional failure to keep such information confidential.

Education Code 37.006(o)

DAEP at Capacity

If a DAEP is at capacity at the time a CBC is deciding placement for a student who engaged in conduct described under Education Code 37.006(a)(2)(C-1) (possession or use of marijuana), (C-2) (possession, use, delivery of an e-cigarette), (D) (delivery of alcohol), or (E) (abuse of volatile chemical), the student shall be placed in in-school suspension; and if a position becomes available in the program before the expiration of the period of the placement, transferred to the program for the remainder of the period.

Placement of Student Who Engaged in Violent Conduct

If a DAEP is at capacity at the time a CBC is deciding placement for a student who engaged in conduct described under Education Code 37.007 that constitutes violent conduct [see below at Determination of Violent Conduct], a student who has been placed in the program for conduct described under Education Code 37.006(a)(2)(C-1), (C-2), (D), or (E) (above) may be removed from the program and placed in in-school suspension to make a position in the program available for the student who engaged in violent conduct. If removed from the program and a position in the program becomes available before the expiration of the period of the placement, the student shall be returned to the program for the remainder of the period.

Determination of Violent Conduct

Violent conduct means an act by a student against another person that is intended to result in physical harm, bodily injury, or assault or a threat that reasonably places the other person in fear of imminent physical harm, bodily injury, or assault. A CBC may determine whether a specific instance of conduct listed below rises to the level of violent conduct for purposes of determining placement in a DAEP.

1. The student engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Penal Code 42.06, or terroristic threat under Penal Code 22.07.

2. While on or within 300 feet of school property, or while attending a school-sponsored or school-related activity on or off school property, the student engages in conduct that contains the elements of the offense of assault under Penal Code 22.01(a)(1), including when committed as an act of retaliation

against an employee or volunteer, as described in Education Code 37.007(d).

3. While on or within 300 feet of school property or while attending a school-sponsored or school-related activity on or off school property, the student engages in conduct that contains the elements of the offense of deadly conduct under Penal Code 22.05.

4. While within 300 feet of school property, or when committed as an act of retaliation against an employee or volunteer, whether the conduct occurs on or off school property or while attending a school-sponsored or school-related activity on or off school property, the student engages in:

    a. Conduct that contains the elements of the offense of unlawful carrying of weapons under Penal Code 46.02;

    b. An offense relating to prohibited weapons under Penal Code 46.05;

    c. Aggravated assault under Penal Code 22.02;

    d. Sexual assault under Penal Code 22.011;

    e. Aggravated sexual assault under Penal Code 22.021;

    f. Arson under Penal Code 28.02;

    g. Murder under Penal Code 19.02;

    h. Capital murder under Penal Code 19.03;

    i. Criminal attempt to commit murder or capital murder under Penal Code 15.01;

    j. Indecency with a child under Penal Code 21.11;

    k. Aggravated kidnapping under Penal Code 20.04;

    l. Aggravated robbery under Penal Code 29.03;

    m. Manslaughter under Penal Code 19.04;

    n. Criminally negligent homicide under Penal Code 19.05;

    o. Continuous sexual abuse of a young child or an individual with disabilities under Penal Code 21.02;

    p. Selling, giving, delivering to another person, possessing, using, or being under the influence of a controlled substance or dangerous drug, excluding marijuana or tetrahydrocannabinol; or

q. Possessing a firearm, as defined by 18 U.S.C. 921.

5. The student engages in conduct against another student, without regard to whether the conduct occurs on or off school property or while attending a school-sponsored or school-related activity on or off school property, that contains the elements of:

   a. The offense of aggravated assault under Penal Code 22.02;

   b. Sexual assault under Penal Code 22.011;

   c. Aggravated sexual assault under Penal Code 22.021;

   d. Murder under Penal Code 19.02;

   e. Capital murder under Penal Code 19.03; or

   f. Criminal attempt to commit murder or capital murder under Penal Code 15.01.

6. While placed in a DAEP and on the program campus, the student engages in documented serious misbehavior despite documented behavioral interventions.

Education Code 37.009(a-1)-(a-2); 19 TAC 103.1205

Completion of Proceedings Upon Withdrawal

If a student withdraws from a district before an order for placement in a DAEP is entered, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student re-enrolls in the district the same or subsequent school year, the district may enforce the order at that time except for any period of the placement that has been served by the student in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order. *Education Code 37.009(i)*

Enrollment in Another District

If a student placed in a DAEP enrolls in another district before the expiration of the placement, a board shall provide to the district in which the student enrolls a copy of the placement order at the same time it provides other records. The district in which the student enrolls shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order. Each educator shall keep the information confidential from any person not entitled to the information, except that the educator may share the information with the student's parent or guardian as provided by state or federal law.

The district in which the student enrolls may continue the placement or allow the student to attend regular classes without completing the period of placement. [See FO] The district in which the student enrolls may take any of these actions if:

1. The student was placed in a DAEP by an open-enrollment charter school and the charter school provides the district a copy of the placement order; or
2. The student was placed in a DAEP by a district in another state and:
    a. The out-of-state district provides a copy of the placement order; and
    b. The grounds for placement are the same as grounds for placement in the enrolling district.

Education Code 37.008(j)

Out-of-State Placement

If a student was placed in a DAEP in another state for more than one year and the enrolling district continues the placement under Education Code 37.008(j), the enrolling district shall reduce the period of placement so that the aggregate period does not exceed one year unless the enrolling district determines that:

1. The student is a threat to the safety of other students or to district employees; or
2. Extended placement is in the best interest of the student.

Education Code 37.008(j-1)

Court-Ordered Placement

Unless a board and the juvenile board for the county in which a district's central administrative office is located have entered into a memorandum of understanding concerning the juvenile probation department's role in supervising and providing other support services for students in DAEP programs:

1. A court may not order a student expelled under Section 37.007 to attend a school district DAEP as a condition of probation;
2. A court may not order a student to attend a DAEP without a district's consent, until the student has successfully completed any sentencing requirements, if the court has ordered the student to attend a DAEP as a condition of probation once during a school year and the student is referred to juvenile court again during that school year.

Education Code 37.010(c)-(d)

School Activities

Any court placement in a DAEP must prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.010(e)*

Placement After Court Disposition

After the student has successfully completed any court disposition requirements, including conditions of deferred prosecution or conditions required by the prosecutor or probation department, a district may not refuse to admit the student if the student meets the requirements for admission into the public schools. A district may place the student in the DAEP.

Notwithstanding Education Code 37.002(d) [see FOA], the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

Education Code 37.010(f)

Not Guilty/ Insufficient Evidence/Charges Dropped

The office of the prosecuting attorney or the office or official designated by the juvenile board shall, within two working days, notify the school district that removed a student to a DAEP under Education Code 37.006 if:

1. Prosecution of a student was refused for lack of prosecutorial merit or insufficient evidence, and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

2. A court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

On receipt of the notice, the superintendent or designee shall review the student's placement in the DAEP. The student may not be returned to the regular classroom pending the review. The superintendent or designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or designee receives notice from the office or official designated by the court.

After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or designee may continue the student's placement in the DAEP if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

Education Code 37.006(h); Code of Criminal Procedure 15.27(g)

Appeal After Placement Upheld

The student or the student's parent or guardian may appeal a superintendent's decision to the board. The student may not be returned to the regular classroom pending the appeal. A board shall, at the next scheduled meeting, review the notice provided by the office of the prosecuting attorney or the office or official designated by the juvenile board; receive information from the student, the student's parent or guardian, and the superintendent or designee; and confirm or reverse the superintendent's decision. The board shall make a record of the proceedings.

If a board confirms the decision, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner of education. The student may not be returned to the regular classroom pending the appeal to the commissioner.

Education Code 37.006(i)-(j)

120-Day Review of Status

A student placed in a DAEP shall be provided a review of the student's status, including a review of the student's academic status, by a board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress toward meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required to provide a course in the DAEP, except as required by Education Code 37.008(l). [See FOCA] At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent. *Education Code 37.009(e)*

Additional Proceedings

If, during the term of placement, a student engages in additional conduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted and the principal or board, as appropriate, may enter an additional order. *Education Code 37.009(j)*

Reporting

A district may include the number of students removed to a DAEP in its annual performance report. *Education Code 39.306(e)(5)* [See AIB]

Note: See FOF for provisions concerning students with disabilities.

A disciplinary alternative education program (DAEP) is an educational and self-discipline alternative instruction program, adopted by local policy, for students in elementary through high school grades who are removed from their regular classes for mandatory or discretionary disciplinary reasons and placed in a DAEP. *19 TAC 103.1201(a)*

[See board-adopted Student Code of Conduct for information regarding DAEP.]

Joint/Contracted DAEP

A district may provide a DAEP jointly with one or more other districts or may contract with third parties for DAEP services. The district must require and ensure compliance with district responsibilities that are transferred to the third-party provider. *Education Code 37.008(d); 19 TAC 103.1201(d)*

A DAEP may provide for a student's transfer to a different campus, a school-community guidance center, or a community-based alternative school. *Education Code 37.008(b)*

Community Organizations

A district shall cooperate with government agencies and community organizations that provide services in the district to students placed in a DAEP. *Education Code 37.008(e)*

Shared Service Arrangements

A district that participates in a shared service arrangement for DAEP services shall ensure that the district improvement plan and each campus-level plan include the performance of the DAEP student group for the district in accordance with 19 Administrative Code 103.1201(b) [see BQ]. *19 TAC 103.1201(b)*

Funding

A student removed to a DAEP is counted in computing a district's average daily attendance for the student's time in actual attendance in the program. *Education Code 37.008(f)*

A district shall allocate to a DAEP the same expenditure per student attending the DAEP that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program. *Education Code 37.008(g)* [See also EHBC(LEGAL), Limit on DAEP Expenditures]

Location

A DAEP shall be provided in a setting other than the student's regular classroom. *Education Code 37.008(a)(1)*

A DAEP may be located on-campus or off-campus in adherence with requirements of the *Student Attendance Accounting Handbook*. For reporting purposes, the DAEP shall use the county-district-campus number of the student's locally assigned campus (the campus the student would be attending if the student was not at-

tending the DAEP). *19 TAC 103.1201(c); Education Code 37.008(a)(2)*

An off-campus DAEP is not subject to a requirement imposed by the Education Code, other than a limitation on liability, a reporting requirement, or a requirement imposed by Education Code Chapter 37 or Chapter 39 or 39A. *Education Code 37.008(c)*

An elementary school student may not be placed in a DAEP with a student who is not an elementary school student. The designation of elementary and secondary is determined by adopted local policy. *Education Code 37.006(f); 19 TAC 103.1201(h)(1)*

Students who are assigned to the DAEP shall be separated from students who are not assigned to the program. Notwithstanding this requirement, summer programs provided by the district may serve students assigned to a DAEP in conjunction with other students, as determined by local policy.

Students in the DAEP shall be separated from students in a juvenile justice alternative education program.

Education Code 37.008(a)(3), (c); 19 TAC 103.1201(f)(3), (h)(3)

Safety

A district is responsible for the safety and supervision of the students assigned to the DAEP; however, the immunity from the liability established in Education Code 22.0511 [see DG], shall not be impacted. The DAEP staff shall be prepared and trained to respond to health issues and emergencies.

Each district shall establish a board-approved policy for discipline and intervention measures to prevent and intervene against unsafe behavior and include disciplinary actions that do not jeopardize students' physical health and safety, harm emotional well-being, or discourage physical activity.

19 TAC 103.1201(h)

Staffing

A DAEP shall employ only teachers who meet certification requirements under Education Code Chapter 21, Subchapter B. The certified teacher-to-student ratio in a DAEP shall be one teacher for each 15 students in elementary through high school grades. *Education Code 37.008(a)(7); 19 TAC 103.1201(h)(1)*

Staff at each DAEP shall participate in training programs on education, behavior management, and safety procedures that focus on positive and proactive behavior management strategies. The training programs must also target prevention and intervention that include:

1. Training on the education and discipline of students with disabilities who receive special education services;
2. Instruction in social skills and problem-solving skills that addresses diversity, dating violence, anger management, and conflict resolution to teach students how to interact with teachers, family, peers, authority figures, and the general public; and
3. Annual training on established procedures for reporting abuse, neglect, or exploitation of students.

19 TAC 103.1201(i)

Entrance Procedures

Procedures for each DAEP shall be developed and implemented for newly entering students and their parents or guardians on the expectations of the DAEP. These procedures shall include written contracts between students, parents or guardians, and the DAEP that formalize expectations and establish the students' individual plans for success. *19 TAC 103.1201(j)*

Academics

The academic mission of DAEPs shall be to enable students to perform at grade level. A DAEP shall focuses on English language arts, mathematics, science, history, and self-discipline. *Education Code 37.008(a)(4), (m)*

A district shall provide an academic and self-discipline program that leads to graduation and includes instruction in each student's currently enrolled foundation curriculum necessary to meet the student's individual graduation plan, including special education services. A student's required high school personal graduation plan [see EIF] may not be altered when the student is assigned to a DAEP.

Opportunity to Complete Course

A district shall offer a student removed to a DAEP an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal, before the beginning of the next school year, through any method available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this provision.

Education Code 37.008(l); 19 TAC 103.1201(f)

A district shall provide the parents of a student removed to a DAEP with written notice of the district's obligation to provide the student with an opportunity to complete coursework required for graduation. The notice must include information regarding all methods available for completing the coursework and state that the methods are available at no cost to the student. *Education Code 37.008(l-1)*

School Day

The school day for a DAEP shall be at least 240 minutes in length each day, including intermissions and recesses. *19 TAC 103.1201(f)(2)*

Accountability

The campus of accountability for student performance must be the student's locally assigned campus, including when the district or shared services arrangement contracts with a third party for DAEP services. *19 TAC 103.1201(e)*

Academic Assessments

A district shall administer to a student placed in a DAEP program for a period of 90 school days or longer an assessment instrument:

1. Initially on placement of the student in the program; and
2. Subsequently on the date of the student's departure from the program, or as near that date as possible.

The assessment instrument:

1. Must be designed to assess at least a student's basic skills in reading and mathematics;
2. May be:
    a. Comparable to any assessment instrument generally administered to students placed in juvenile justice alternative education programs for a similar purpose; or
    b. Based on an appropriate alternative assessment instrument developed by the agency to measure student academic growth; and
3. Is in addition to the required state assessments [see EKB].

Education Code 37.0082

Released state assessments for reading and mathematics for the appropriate grade may be used. A district may apply for approval of an assessment that includes the Texas Essential Knowledge and Skills for reading and mathematics for the student's assigned grade. The commissioner will publish on the Texas Education Agency (TEA) website a list of assessments approved for use in each school year. A district may contact TEA to obtain accommodated versions of particular assessments.

The grade level of an assessment shall be based upon the academic grade completed prior to the student being assigned to a DAEP if placement occurs in the fall or first semester of the academic school year. If placement occurs in the spring or second semester of the academic school year, the student shall be administered an assessment based on the current grade level.

Each district shall provide an academic report to the student's locally assigned campus, which shall include the pre- and post-assessment results of the student's basic skills in reading and mathematics, within 10 school days of the student completing the post-assessment.

Procedures for administering the pre- and post-assessment, including appropriate accommodations as needed, shall be developed and implemented in accordance with local district policy.

A student in the district's DAEP must also be assessed under the required state assessment [see EKB].

19 TAC 103.1203

Special Populations

Special Education

A DAEP serving a student with a disability who receives special education services shall provide educational services that will support the student in meeting the goals identified in the individualized education program (IEP) established by a duly-constituted admission, review, and dismissal (ARD) committee, in accordance with Education Code 37.004 and federal requirements. *19 TAC 103.1201(g)*

Drug and Alcohol Treatment

A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs, e-cigarettes, or alcohol as specified under Education Code 37.006 and 37.007. A DAEP that provides chemical dependency treatment services must be licensed under Health and Safety Code Chapter 464. *Education Code 37.008(k)*

Transition to Regular Classroom

The transition services established for a student who is exiting a DAEP and returning to the student's locally assigned campus shall be implemented as required by Education Code 37.023.*19 TAC 103.1201(k)*

Definitions

"Alternative education program" includes:

1. A disciplinary alternative education program operated by a school district or open-enrollment charter school;
2. A juvenile justice alternative education program; and
3. A residential program or facility operated by or under contract with the Texas Juvenile Justice Department, a juvenile board, or any other governmental entity.

"Licensed clinical social worker" has the meaning assigned by Occupations Code 505.002.

Education Code 37.023(a)

After Determination of the Release Date

As soon as practicable after an alternative education program determines the date of a student's release from the program, the alternative education program administrator shall:

1. Provide written notice of that date to:
    a. The student's parent or a person standing in parental relation to the student; and
    b. The administrator of the campus to which the student intends to transition; and
2. Provide the campus administrator:
    a. An assessment of the student's academic growth while attending the alternative education program; and
    b. The results of any assessment instruments administered to the student.

Education Code 37.023(b)

Coordination After Release

Not later than five instructional days after the date of a student's release from an alternative education program, the campus administrator shall coordinate the student's transition to a regular classroom. The coordination must include assistance and recommendations from:

1. School counselors;
2. School district peace officers;
3. School resource officers;
4. Licensed clinical social workers;
5. Campus behavior coordinators;
6. Classroom teachers who are or may be responsible for implementing the student's personalized transition plan; and
7. Any other appropriate school district personnel.

Education Code 37.023(c)

Personalized Transition Plan

The assistance described above must include a personalized transition plan for the student developed by the campus administrator. A personalized transition plan:

1. Must include:
    a. Recommendations for the best educational placement of the student; and

b. The provision of information to the student's parent or a person standing in parental relation to the student regarding the process to request a full individual and initial evaluation of the student for purposes of special education services under Education Code 29.004 [see EHAA]; and

2. May include:

a. Recommendations for counseling, behavioral management, or academic assistance for the student with a concentration on the student's academic or career goals;

b. Recommendations for assistance for obtaining access to mental health services provided by the district or school, a local mental health authority, or another private or public entity; and

c. A regular review of the student's progress toward the student's academic or career goals.

Education Code 37.023(d)

Parent Meeting

If practicable, the campus administrator, or the administrator's designee, shall meet with the student's parent or a person standing in parental relation to the student to coordinate plans for the student's transition.

Applicability

Education Code 37.023 applies only to a student subject to compulsory attendance requirements under Education Code 25.085 [see FEA].

Education Code 37.023(e)-(f)

COMMUNITY-BASED ALTERNATIVE SCHOOLS AND PROGRAMS

1. A community-based alternative school or program is a school or program designed to meet the needs of students who benefit from a nontraditional educational environment. The schools and programs address specific academic needs and meet individualized instructional, social, or behavioral needs of those students who require nontraditional services to optimize their potential for success. Students in these programs may also be referred for consideration of special education services. See References (a), (b), (c), and (f). Alternative schools and programs are categorized as enrollment-by-choice, enrollment-by-referral or placement, and partnership programs. For lists of community-based alternative schools and programs by category and information regarding services offered, eligibility, entrance requirements, and location, see References (d) and (e).

GUIDELINES

2. The District may contract with public or private sector organizations, or both, to provide educational services to children on District or nondistrict premises. Such organizations may receive state funding through the District and operate their own programs in District or nondistrict facilities; or the District may provide teachers to work with students in a nondistrict facility.

REQUIREMENTS

3. For each community-based alternative school or program, a proposed contract between or among the parties must be recommended by the Superintendent and approved by the Board of Education prior to implementation of the school or program.

CONSULTATION

4. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

5. The chief academic officer, Academic Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy EHBAE(LEGAL)

(b) Board Policy FOC(LEGAL)

(c) Board Policy FOCA(LEGAL)

(d) Elementary School Guidelines

(e) Secondary School Guidelines

(f) Special Education Services Operating Guidelines

Students Younger Than 10

A student younger than 10 years of age shall not be expelled but shall be placed in a disciplinary alternative education program (DAEP). *Education Code 37.007(e)(2), (h)*

Overage Students

A person who is 21 years of age or older and is admitted by a district for the purpose of completing the requirements for a diploma is not eligible for placement in a juvenile justice alternative education program (JJAEP) if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in such conduct, a district shall revoke the student's admission. *Education Code 25.001(b-1)*

Mandatory Expulsion

School Related

Subject to the requirements of Education Code 37.009(a) [see Preplacement Proceedings, below], a student shall be expelled if the student, on or off of school property:

1. Engages in conduct that contains the elements of the offense of unlawfully carrying weapons under Penal Code 46.02 or elements of an offense relating to prohibited weapons under Penal Code 46.05 [see FNCG];

2. Engages in conduct that contains the elements of the offense of aggravated assault, sexual assault, aggravated sexual assault, arson, murder, capital murder, criminal attempt to commit murder or capital murder, indecency with a child, kidnapping, aggravated kidnapping, burglary, robbery, aggravated robbery, manslaughter, criminally negligent homicide, or continuous sexual abuse of a young child or disabled individual, as those offenses are defined in the Penal Code;

3. Commits a drug- or alcohol-related offense described at Education Code 37.006(a)(2)(C), if that conduct is punishable as a felony;

4. Engages in conduct that contains the elements of the offense of assault under Penal Code 22.01(a)(1) against a school district employee or volunteer as defined by Education Code 22.053; or

5. Engages in conduct that contains the elements of the offense of exhibiting, using, or threatening to exhibit or use a firearm under Education Code 37.125.

Education Code 37.007(a)

Exception

A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs:

1. At an approved target range facility that is not located on a school campus; and

2. While participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department.

This section does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored shooting sports competition or a shooting sports educational activity.

Education Code 37.007(k), (l)

Federal Firearms Offense

In accordance with the Gun-Free Schools Act, a district shall expel a student who brings a firearm, as defined by federal law, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that the superintendent may modify in writing the length of expulsion in the case of an individual student.

Exception

This provision shall not apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the district and the district adopts appropriate safeguards to ensure student safety. [See also GKA].

Provision of Educational Services

A district or other local educational agency shall provide educational services to an expelled student in a DAEP if the student is younger than 10 years of age on the date of expulsion. A district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a DAEP.

20 U.S.C. 7961; Education Code 37.007(e)

Definitions

For purposes of this provision:

School

"School" means any setting that is under the control and supervision of a district for the purpose of student activities approved and authorized by the district. *20 U.S.C. 7961(f)*

Firearm

"Firearm" means:

1. Any weapon (including a starter gun), which will or is designed to or which may readily be converted to expel a projectile by the action of an explosive;

2. The frame or receiver of any such weapon;

3. Any firearm muffler or firearm silencer; or

4. Any destructive device. "Destructive device" means any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile hav-

ing an explosive or incendiary charge of more than one-quarter ounce, mine, or device similar to any of the preceding described devices. It also means any type of weapon (other than a shotgun shell or a shotgun that is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and any combination of parts either designed or intended for use in converting any device into a destructive device as described in this item, and from which a destructive device may be readily assembled.

18 U.S.C. 921, 20 U.S.C. 7961(b)(3)

Discretionary Expulsion

Threats

A student may be expelled if the student engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Penal Code 42.06, or terroristic threat under Penal Code 22.07.

School-Related Conduct

A student may be expelled if the student, while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

1. Sells, gives, or delivers to another person, or possesses, uses, or is under the influence of any amount that is not punishable as felony of:
    a. Marijuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. section 801 et seq.; or
    b. A dangerous drug, as defined by Chapter 483, Health and Safety Code; or
    c. An alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.
2. Engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Health and Safety Code 485.031-485.034.
3. Engages in conduct that contains the elements of the offense of deadly conduct under Penal Code 22.05.

Education Code 37.007(b)(1)-(2)

Possession of Firearm Within 300 Feet of School

A student may be expelled if the student, while within 300 feet of school property, as measured from any point on the school's real property boundary line, engages in possession of a firearm, as de-

fined by 18 U.S.C. sec. 921 [see Federal Firearm Offense, above]. *Education Code 37.007(b)(3)*

Bullying

A student may be removed from class and expelled if the student:

1. Engages in bullying that encourages a student to commit or attempt to commit suicide;
2. Incites violence against a student through group bullying; or
3. Releases or threatens to release intimate visual material of a minor or student who is 18 years of age or older without the student's consent.

Nothing in this provision exempts a school from reporting a finding of intimate visual material of a minor.

Definitions

Bullying

"Bullying" has the meaning assigned by Education Code 37.0832. [See FFI]

Intimate Visual Material

"Intimate visual material" has the meaning assigned by Civil Practice and Remedies Code 98B.001.

Education Code 37.0052

Criminal Mischief

A district may use its discretion to expel a student who has engaged in conduct that contains the elements of criminal mischief, as defined in the Penal Code, if the conduct is punishable as a felony. Regardless of whether the student is expelled, a district shall refer the student to the authorized officer of the juvenile court. *Education Code 37.007(f)*

Breach of Computer Security

A student may be expelled if the student engages in conduct that contains the elements of the offense of breach of computer security under Penal Code 33.02 if:

1. The conduct involves accessing a computer, computer network, or computer system owned by or operated on behalf of a school district; and
2. The student knowingly alters, damages, or deletes school district property or information; or commits a breach of any other computer, computer network, or computer system.

Education Code 37.007(b)(4)

Serious Misbehavior in DAEP

A student placed in a DAEP who engages in documented serious misbehavior while on the DAEP campus despite documented behavioral interventions may be removed from class and expelled.

"Serious misbehavior" means:

1. Deliberate violent behavior that poses a direct threat to the health or safety of others;
2. Extortion, meaning the gaining of money or other property by force or threat;
3. Conduct that constitutes coercion, as defined by Penal Code 1.07; or
4. Conduct that constitutes the offense of:
    a. Public lewdness under Penal Code 21.07;
    b. Indecent exposure under Penal Code 21.08;
    c. Criminal mischief under Penal Code 28.03;
    d. Personal hazing under Education Code 37.152; or
    e. Harassment, under Penal Code 42.07(a)(1), of a student or district employee.

If the student is expelled, a board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Family Code Title 3 (Juvenile Justice Code).

Education Code 37.007(c), .010(b)

Consideration of Virtual Education as Alternative to Expulsion

Before a school district may expel a student, the district must consider the appropriateness and feasibility of, as an alternative to expulsion, enrolling the student in a full-time hybrid program, full-time virtual program, full-time hybrid campus, or full-time virtual campus. [See EHDE for definitions.] This requirement does not apply to a student expelled under Education Code 37.0081 or 37.007(a), (d), or (e). *Education Code 37.0071*

Pre-placement Proceedings

Conference

Not later than the third class day after a student is removed by a teacher or by the school principal or other appropriate administrator, the campus behavior coordinator (CBC) or other appropriate administrator shall schedule a conference among the CBC or other appropriate administrator, the student's parent or guardian, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular class pending the conference.

Mitigating Factors Before Ordering Removal

Before ordering removal, the CBC must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially im-

pairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action.

Order the Placement

Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the CBC, after considering any mitigating factors under Education Code 37.001(a)(4) [see FO], shall order the placement of the student for a period consistent with the Student Code of Conduct.

Education Code 37.009(a) [See Student Code of Conduct]

Expulsion Proceedings

Due Process

Before a student may be expelled, a board or its designee shall provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. *Education Code 37.009(f)*

The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved. Federal due process requires notice and some opportunity for hearing.

Notice

The notice should contain a statement of the specific charges and grounds that, if proven, would justify expulsion. In some cases, the student should be given the names of the witnesses against him or her and an oral or written report on the facts to which each witness testifies.

Hearing

The rights of the student may properly be determined upon the hearsay evidence of school administrators who investigate disciplinary infractions.

[See also *Brewer v. Austin Indep. Sch. Dist.*, 779 F.2d 260 (5th Cir. 1985); *Keough v. Tate Cnty. Bd. of Educ.*, 748 F.2d 1077 (5th Cir. 1984); *McClain v. Lafayette Cnty. Sch. Bd. of Educ.*, 673 F.2d 106 (5th Cir. 1982); *Tasby v. Estes*, 643 F.2d 1103 (5th Cir. 1981); *Boykins v. Fairfield Bd. of Educ.*, 492 F.2d 697 (5th Cir. 1974), cert. denied, 420 US 962 (1975); *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930 (1961)]

Representative

At the hearing, the student is entitled to be represented by the student's parent, guardian, or another adult who can provide guidance to the student and who is not an employee of the district. If a district makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, the district may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends.

Mitigating Factors Before Ordering Expulsion

Before ordering the expulsion of a student, the board or the board's designee must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the board concerns a mandatory or discretionary action. [See Student Code of Conduct, item 4, at FO(LEGAL) for additional mitigating factors.]

Appeal

If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a district court of the county in which the district's central administrative office is located.

Education Code 37.009(f)

Term of Expulsion

If the period of expulsion is inconsistent with the guidelines on length of expulsion in the Student Code of Conduct, the order must give notice of the inconsistency.

Beyond One Year

The period of expulsion may not exceed one year unless a district determines that:

1. The student is a threat to the safety of other students or to district employees; or
2. Extended placement is in the best interest of the student.

Education Code 37.009(h)

Notice of Expulsion Order

A board or its designee shall deliver a copy of the order expelling the student to the student and the student's parent or guardian. After such notification, the parent or guardian shall provide adequate supervision for the student during the period of expulsion. *Education Code 37.009(g)-(h)*

To Parent or Guardian

To Court

Not later than the second business day after the date an expulsion hearing is held, a board or its designee shall deliver a copy of the expulsion order and any information required under Family Code 52.04 to the authorized officer of the juvenile court in the county in which the student resides.

Family Code 52.04 requires the following information from a referring entity that is not a law enforcement agency or has not taken the child into custody:

1. All information in a district's possession pertaining to the identity of the child and the child's address; the name and address of the child's parent, guardian, or custodian; the names and

addresses of any witnesses; and the child's present whereabouts; and

2. A complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision.

Education Code 37.010(a); Family Code 52.04(a), .041(a)-(b)

To Juvenile Board

In a county that operates a JJAEP [see FODA], no student shall be expelled without written notification by a board or its designee to the juvenile board's designated representative. The notification shall be made not later than two business days following a board's determination that the student is to be expelled. Failure to timely notify the designated representative shall result in the child's duty to continue attending a district's educational program, which shall be provided to that child until such time as the notification to the designated representative is properly made. *Family Code 52.041*

To Staff

In addition to providing any notice required under Code of Criminal Procedure 15.27 [see GRA], a district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in expellable conduct.

Each educator shall keep the information confidential from any person not entitled to the information, except that the educator may share the information with the student's parent or guardian as provided by state or federal law. An educator's certificate may be suspended or revoked for intentional failure to keep such information confidential.

Education Code 37.007(g)

Completion of Proceeding Upon Withdrawal

If a student withdraws from a district before an order for expulsion is entered, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the district during the same or subsequent school year, the district may enforce the order at that time except for any period of the expulsion that has been served by the student in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order. *Education Code 37.009(i)*

Additional Proceedings

If, during the term of expulsion, a student engages in additional conduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted and the principal or board, as appropriate, may enter an additional order. *Education Code 37.009(j)*

Appeals

A decision by a board's designee to expel a student may be appealed to the board. If the hearing is not before the board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. *Education Code 37.009(f); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930 (1961)*

Restrictions on Court Orders

A court may not order an expelled student to attend a regular classroom, a regular campus, or a district DAEP as a condition of probation.

Exception

A court may order a student to attend a regular classroom, a regular campus, or a district DAEP if the district has entered into a memorandum of understanding (MOU) with the juvenile board for the county in which the district's central administrative office is located, concerning the juvenile probation department's role in supervising and providing other support services for students in DAEPs.

Education Code 37.010(c)

District Responsibility for Expelled Student

Students Not Eligible for Existing JJAEP

In a county that operates a JJAEP, a district is responsible for providing an immediate educational program to a student who engages in behavior for which expulsion is permitted but not required under Education Code 37.007, but who is not eligible for admission into the JJAEP in accordance with an MOU. [See FODA]

Contracting for Services

A district may provide the program, or the district may contract with a county juvenile board, a private provider, or one or more other school districts to provide the program.

Education Code 37.011(l)

Certain Districts

This provision applies to a district located in a county considered to be a county with a population of 125,000 or less because it has a population of more than 200,000 and less than 233,500; has five or more school districts located wholly within the county's boundaries; and has located in the county a JJAEP that, on May 1, 2011, served fewer than 15 students. A qualifying district shall provide educational services to a student who is expelled from school. The district is entitled to count the student in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. An educational placement under this section may include:

1. The district's DAEP.
2. A contracted placement with another school district, an open-enrollment charter school, an institution of higher education,

an adult literacy council, or a community organization that can provide an educational program that allows the student to complete the credits required for high school graduation.

An educational placement other than a district's DAEP is subject to the educational and certification requirements applicable to an open-enrollment charter school under Education Code Chapter 12, Subchapter D.

Education Code 37.011(a-3)-(a-5)

Return to Class

Early / Permissive

On the recommendation of the placement review committee, or on its own initiative, a district may readmit an expelled student while the student is completing any court disposition requirements.

Required

After an expelled student has successfully completed any court disposition requirements, including conditions of a deferred prosecution, or conditions required by the prosecutor or probation department, a district may not refuse to admit the student if the student meets the requirements for admission. [See FD] A district may place the student in a DAEP.

The student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

Education Code 37.010(f)

Expelled from Another District

If a student has been expelled from another school district, the expelling district shall provide to a district in which the student enrolls a copy of the expulsion order and the referral to the authorized officer of the juvenile court. A district in which the student enrolls may continue the expulsion under the terms of the order, may place the student in a DAEP for the period specified by the expulsion order, or may allow the student to attend regular classes without completing the period of expulsion.

Out-of-State Expulsion

A district may take any of the above actions if the student was expelled by a district in another state if:

1. The out-of-state district provides a copy of the expulsion order; and
2. The grounds for the expulsion are also grounds for expulsion in the district in which the student is enrolling.

Education Code 37.010(g)

If the student was expelled for more than one year and the enrolling district continues the expulsion or places the student in a

DAEP, the aggregate period of expulsion or placement may not exceed one year unless the district determines that:

1. The student is a threat to the safety of other students or to district employees; or
2. Extended placement is in the best interest of the student.

Education Code 37.010(g-1)

Note: See FOF for provisions concerning expulsion of students with disabilities.

Virtual Expulsion Program

The principal or other appropriate administrator may place a student who has been expelled under Education Code 37.007 or 37.0081 in a virtual expulsion program established by the district and provide virtual instruction and instructional materials for remote learning to the student only if:

1. The district is located in a county that operates a JJAEP or the school district contracts with the juvenile board of another county for the provision of a JJAEP, and the JJAEP rejects admission of the student or returns the student before the expiration of the discipline assignment; or
2. The district is not located in a county that operates a JJAEP and does not contract with the juvenile board of another county for the provision of a JJAEP.

A school district must ensure that, to the extent practicable in a virtual setting, the district's virtual expulsion program complies with the requirements for a disciplinary alternative education program under Education Code 37.008. [See FOC]

Equipment and Internet

If the principal or other appropriate administrator places a student in a virtual expulsion program under this section, the school district shall ensure that the student has suitable computer equipment and internet access and provide the computer equipment and internet access if necessary.

Review of Placement

The principal or other appropriate administrator shall review the placement of a student in a virtual expulsion program at least once every 45 school days after the date the placement begins to determine if continued placement in the program is appropriate. The review must consider whether a position for the grade level in which the student is enrolled has become available in an in-person setting in a JJAEP. If the principal or other appropriate administrator determines that such a position has become available, the district shall plan for the student's transition to an in-person setting as

soon as practicable. If the principal or other appropriate administrator determines that continued placement is appropriate, the principal or other appropriate administrator shall document the determination.

Funding

A student placed in a virtual expulsion program shall be counted toward the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program if the district can confirm the student's daily attendance in the virtual expulsion program.

The commissioner of education shall adopt rules providing for a method of taking attendance for students placed in a virtual expulsion program.

Teachers

A district may not require a teacher who provides virtual instruction to students in a virtual expulsion program to provide virtual instruction and in-class instruction for a course during the same class period. A teacher may not provide instruction for a virtual expulsion program course unless the teacher has completed a professional development course on virtual instruction.

The commissioner of education shall adopt rules requiring districts to provide basic professional development training for teachers providing instruction in a virtual expulsion program.

Education Code 37.0083

PROPOSED STUDENT EXPULSION

1. The following guidelines suggest a format of a hearing, which can be adapted for use by the school administrator in the event of a proposed expulsion. The guidelines are based on federal court decisions, which establish the basic procedural requirements of the Fourteenth Amendment of the Constitution of the United States. Furthermore, they reflect the mandates of state law. The procedures for conducting expulsion hearings are contained in the Student Code of Conduct and Board policy. See References (a), (b) and (d). Adjustments may be made to meet particular needs; however, individual format should be developed in advance and strictly followed to ensure the student of fair and reasonable treatment.

NATURE OF THE HEARING

a. The hearing is not a criminal proceeding and should not be referred to or conducted as such. The administrative hearing should be conducted without the rigidity of court hearings; there are no specific rules of evidence or procedure that must be followed. The thrust of the entire hearing is directed toward a determination of whether the reasons offered for the proposed expulsion are supported by the evidence. The evidence offered at the hearing should be directed toward attaining the truth, and each situation may call for a slightly different approach. The key to conducting a successful hearing is to search for the truth through reasonableness and fairness.

THE HEARING OFFICIAL

b. The student is entitled to an impartial hearer of facts. The principal may conduct the hearing unless he or she is biased or prejudiced against the student and the student can subsequently establish that this bias or prejudice deprived him or her of a fair hearing; or unless the principal's acts, judgments, or decisions are at issue (i.e., if the confrontation or the incident at issue involved the administrator directly). If the principal is not qualified under this rule, his or her designee will then be called upon as an impartial designee to conduct the hearing. The process requires appointment of someone to conduct the hearing that is objectively uninvolved and can render a fair decision.

REPRESENTATION OF THE STUDENT

c. There is no requirement that the student have representation at the hearing. If the student or his or her parents request that he or she be represented by an attorney, his or her parents, or another adult, the request must be granted. The school should attempt to involve the parents in the disciplinary proceedings from the outset. If the school has made a good-faith effort to invite the par-

ent or representative to attend and has not been successful, the hearing may proceed in their absence. The administration's case may be presented by a school official involved in discipline at the school level or the District's General Counsel, whichever is deemed appropriate.

A RECORDING OF THE HEARING

d. A record of the hearing should be made to substantiate that the required elements of procedural due process were afforded to the student. This can be accomplished by several methods.

TAPE RECORDER

(1) The preferred method at the building level is to tape record the entire proceeding. The presence of a tape recorder has a constructive effect on the decorum of the hearing; however, its presence can also create an atmosphere so formal that the participants may be reluctant to discuss the issue in terms that will result in a resolution of the problem. At its option, the school may also make a transcription of the tape.

SECRETARY

(2) A second method is to have a secretary or a member of the staff keeps, as nearly as possible, an accurate record of what was said.

COURT REPORTER

(3) At the option of school officials, consideration may be given to utilizing a court reporter.

When any of these methods are used, the student and his or her parents or other representative should be so advised. All evidence that is introduced in the form of written documents should be marked so as to identify the origin and order of introduction. Examples of this would be "School Exhibit 1, 2, 3, etc." and "Student Exhibit 1, 2, 3, etc."

The tape recordings or notes need not be transcribed until an appeal has been perfected to the next level. When the appeal is to the next administrative level, it is left to the discretion of the next hearing officer whether to transcribe the recordings or simply listen to the tapes.

OPEN OR CLOSED HEARING

e. Since the Texas Open Meetings Law is not applicable to hearings before school administrators, such hearings will be closed to the public. See Reference (c).

WITNESSES IN THE ROOM

f. At the request of the school representative, the student, or his or her parents, all witnesses may be excluded from the room while the others are offering testimony.

The hearing officer should make this suggestion at the beginning of the hearing. At no time may the student or his or her attorney or representative be excluded from the room except at the conclusion of a closed hearing when the hearing officer is deliberating.

CROSS-EXAMINATION

g. The hearing officer should ordinarily allow cross-examination except where it imposes an undue burden to the efficient administration of the school or may pose a threat to the safety of a witness.

SWORN WITNESSES

h. If a Notary Public or other officer capable of taking oaths is available, witnesses should be sworn before offering testimony.

SUGGESTED PROCEDURE FOR CONDUCTING THE HEARING

i. Recognizing that each situation may call for a slightly different method of presentation, the following guidelines are offered keeping in mind that the hearing itself should be kept informal so that the truth may be obtained and a fair and just result reached.

PROCEDURES

(1) Advise the parties of the procedures to be followed:

- The hearing is recorded, and either side may request the witnesses be sent to another room and be called individually;
- No formal rules of evidence will be followed and the hearing will be informal as it is not a criminal proceeding. All evidence should be relevant to the charges. However, certain procedures may be established that will facilitate the conduct of the hearing;
- The clerk, secretary, or court reporter, who is receiving the evidence or recording what is said should be identified as the person to whom exhibits and other written evidence or materials are to be presented; and
- The parties and their representative capacities should be identified for the record prior to commencing the hearing.

STATE THE REASONS FOR THE PROPOSED EXPULSION

(2) The hearing officer should read the written reasons, which were mailed (preferably by certified mail) or otherwise delivered to the student, his or her parents, and his or her representative that support the proposed expulsion. This should be done to ensure that the record will adequately reflect the rea-

sons for the proposed action, to substantiate that all parties had notice of the proposed reasons and possible punishment, and to narrow the issues.

ALLOW THE SCHOOL TO PRESENT WITNESSES AND EVIDENCE

(3) The witnesses for the administration then present their evidence, which support the reasons given for the expulsion. This may be done in any manner that is conducive to reaching the truth and supports the reasons offered for expulsion. The names of the administration's witnesses together with a general description of their testimony must be given to the student, his or her parents, or his or her attorney or representative in advance of the hearing so he or she can prepare an adequate defense.

ALLOW THE STUDENT TO PRESENT WITNESSES AND EVIDENCE

(4) The student and his or her attorney should be given an opportunity to present witnesses and evidence to disprove the reasons offered by the school's witnesses.

ALLOW CONCLUDING REMARKS AND ARGUMENTS

(5) At the conclusion of the presentation of witnesses by the school and the student, each side should be allowed the opportunity to make concluding remarks and arguments regarding the evidence that has been presented and the reasons for the expulsion.

EVIDENCE

j. If, at the conclusion of the hearing, the reasons given for the proposed expulsion are supported by the evidence offered at the hearing, the student may be expelled. Often, after a full and fair hearing has been conducted, it is not necessary to reassign or expel the student because the problem has been worked out. Frequently, agreement between the administrator and the student and his or her parents can be reached as to the student's future conduct at school, or as an alternative the student may be transferred to a special program or special school. The action of the student does not have to be proven beyond a reasonable doubt as in a criminal trial, but the action must be supported by the preponderance of the evidence. There must be evidence presented upon which the hearing officer can establish that the student did not do the alleged acts. In determining whether there is evidence to support a finding of misconduct, the hearing officer may take into consideration only that evidence presented at the hearing. The hearing officer should not consider any rumor or other suggestion heard outside the room prior to or after the hearing.

MAKING THE DECISION AND GIVING NOTICE TO THE PARTIES

k. After the hearing officer decides whether to expel a student, the hearing officer has the responsibility of informing as soon as possible the student, his or her parents, the student's attorney, or his or her representative both orally and in writing of the decision. If the student is found guilty of misconduct, the decision should specify the misconduct in sufficient detail to inform the student fully of what he or she was found to have done. The decision must be specific enough so as a reasonable person can be advised of the finding and know what to appeal to the next level.

CONSULTATION

2. This regulation has been through consultation (Administrative: July 6, 2004; Instructional: April 1, 2004; Noninstructional: May 11, 2004).

MAINTENANCE RESPONSIBILITY

3. The chief school administrator, School Administration, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy FNG(LOCAL)

(b) Board Policy FOD(LEGAL)

(c) Texas Open Meetings Law

(d) The Student Code of Conduct

Meetings with Juvenile Board

A board or designee shall regularly meet with either:

1. The juvenile board for the county in which a district's central administrative office is located; or
2. The juvenile board's designee.

The meeting shall be called by the board president and shall address supervision and rehabilitative services appropriate for expelled students and students assigned to disciplinary alternative education programs (DAEPs).

Matters for discussion shall include:

1. Service by probation officers at the DAEP site;
2. Recruitment of volunteers to serve as mentors and provide tutoring services; and
3. Coordination with other social service agencies.

Education Code 37.013

Juvenile Justice Alternative Education Program

For the purposes of the following provisions, only a DAEP operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program (JJAEP).

Mandatory JJAEP

The juvenile board of a county with a population greater than 125,000 shall develop a JJAEP, subject to the approval of the Texas Juvenile Justice Department (TJJD).

Voluntary JJAEP

The juvenile board of a county with a population of 125,000 or less may develop a JJAEP. Such a JJAEP is not required to be approved by the TJJD. Further, it is not subject to Education Code 37.011(c), (d), (f), (g), (k) or (m).

Education Code 37.011(a), (k), (m)

County Population

A county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if:

1. The county had a population of 125,000 or less according to the 2000 federal census and the juvenile board of the county enters into, with the approval of the TJJD, a memorandum of understanding (MOU) with each school district within the county that:
    a. Outlines the responsibilities of the board and school districts in minimizing the number of students expelled without receiving alternative educational services; and
    b. Includes the coordination procedures required by Education Code 37.013, above.

2. Has a population of 195,000 or less; is adjacent to two counties, each of which has a population of more than 1.7 million; and has seven or more school districts located wholly within the county's boundaries.

3. Has a population of more than 200,000 and less than 233,500; has five or more school districts located wholly within the county's boundaries; and has located in the county a JJAEP that, on May 1, 2011, served fewer than 15 students.

Education Code 37.011(a-1)-(a-3)

Note: The following provisions apply to all districts that operate JJAEPs, whether voluntary or mandatory.

Placement of Students in JJAEP — Expelled Students

An expelled student shall, to the extent provided by law or by the MOU, immediately attend the educational program from the date of expulsion. *Education Code 37.010(a)* [See FOD]

Court-Ordered Placement

If a student admitted under Education Code 25.001(b) is expelled for conduct for which expulsion is required under Education Code 37.007(a) or (e) or for conduct that contains the elements of the offense of terroristic threat as described by Penal Code 22.07(c-1), (d), or (e), the juvenile court, juvenile board, or juvenile board's designee, as appropriate, shall:

1. If the student is placed on probation under Family Code 54.04, order the student to attend the JJAEP in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;

2. If the student is placed on deferred prosecution under Family Code 53.03 by the court, prosecutor, or probation department, require the student to immediately attend the JJAEP in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;

3. In determining the condition of the deferred prosecution or court-ordered probation, consider the length of a district's expulsion order for the student; and

4. Provide timely educational services to the student in the JJAEP in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student. This provision does not require that ed-

ucational services be provided to a student who is not entitled to admission under Education Code 25.001(b).

Education Code 37.011(b)-(b-1)

A student transferred to a JJAEP must participate in the program for the full period ordered by the juvenile court, unless a district agrees to accept the student before the date ordered by the juvenile court. *Education Code 37.011(i)*

Students Who Move

If a student who is ordered to attend a JJAEP moves from one county to another, the juvenile court may request the JJAEP in the county to which the student moves to provide educational services to the student in accordance with the local MOU between the district and the juvenile board in the receiving county. *Education Code 37.011(n)*

Entry and Exit Transition Plans

For each student, the JJAEP must coordinate with the sending school district to develop a written transition plan for entrance into the JJAEP. For each student, the JJAEP must develop a written exit transition plan, provide the plan to the receiving school district, and maintain written verification that the plan was sent. The exit transition plan must include all information regarding courses in progress or completed, current grades for courses in progress, and the number of attendance days and absent days. *37 TAC 348.212(b)*

[See FOCA for requirements regarding transition to the regular classroom.]

Funding for JJAEPs

Except as determined by the commissioner of education, a student served by a JJAEP on the basis of conduct for which expulsion is required under Education Code 37.007 is not eligible for Foundation School Program funding if the JJAEP receives funding from the TJJD. *Education Code 37.011(h)*

Mandatory Expulsions

Court-Assigned Students

A district is not required to provide funding to a juvenile board for a student who is assigned by a court to a JJAEP but who has not been expelled. *Education Code 37.012*

Title 5 Felony Placements

A district shall reimburse a JJAEP in which a student is placed under Education Code 37.0081 [see FOE] for the actual cost incurred each day the student is enrolled in the program. For purposes of this subsection:

1. The actual cost incurred each day for the student is determined by the juvenile board of the county operating the program; and

2. The juvenile board shall determine the actual cost each day of the program based on the board's annual audit.

Education Code 37.0081(g)

Funding for Discretionary Expulsions

Subject to Education Code 37.011(n) [see Students Who Move, above], the district in which a student is enrolled on the date the student is expelled for conduct for which expulsion is permitted but not required under Education Code 37.007 shall, if the student is served by the JJAEP, provide funding to the juvenile board in an amount determined by the MOU under Education Code 37.011(k).

The amount of the funds transferred is determined by the portion of the school year for which the JJAEP provides educational services to a district.

Education Code 37.012(a)

Arbitration of Disputes

If a district elects to contract with the juvenile board for the placement of students who are expelled for conduct for which expulsion is permitted but not required under Education Code 37.007, and the juvenile board and the district are unable to reach an agreement in the MOU, either party may request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator.

Each party shall pay its pro rata share of the arbitration costs and shall submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the district shall select an arbitrator, and those two arbitrators shall select an arbitrator who shall decide the issues in dispute.

Decision of Arbitrator

The arbitration decision is enforceable in a court in the county in which the JJAEP is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a JJAEP must provide an amount sufficient based on operation of the JJAEP. In determining the amount to be paid by a district for an expelled student enrolled in a JJAEP, the arbitrator shall consider the relevant factors, including evidence of:

1. The actual average total per student expenditure in the district's DAEP;

2. The expected per student cost in the JJAEP as described and agreed on in the MOU and in compliance with Education Code Chapter 37; and

3. The costs necessary to achieve the accountability goals under Education Code Chapter 37.

Education Code 37.011(p)

Fees

Except as otherwise authorized by law [see FP], a JJAEP may not require a student, or the parent or guardian, to pay any fee, including an entrance or supply fee, for participating in the program. *Education Code 37.012(e)*

Location and Staffing

A JJAEP may be provided in a facility owned by a district. A district may provide personnel and services for a JJAEP under a contract with the juvenile board. *Education Code 37.011(e)*

Academic Mission of JJAEP

Academically, the mission of the JJAEP shall be to enable students to perform at grade level.

Accountability

For purposes of accountability under Education Code Chapters 39 and 39A, a student enrolled in a JJAEP is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program.

Education Code 37.011(h)

Program Requirements

JJAEP programs operated under Education Code 37.011 must comply with the requirements found at 37 Administrative Code Chapter 348. *37 TAC 348.104(b)*

Note: The following provisions apply only to districts located in counties with a population greater than 125,000 that are not exempt from the application of the provisions as detailed in Education Code 37.011(a-1), (a-2), or (a-3) [see County Population, above].

Memorandum of Understanding

A district and the county juvenile board shall, no later than September 1 of each school year, enter into a joint MOU that:

1. Outlines the responsibilities of the juvenile board concerning the establishment and operation of a JJAEP;
2. Defines the amount and conditions on payments from the district to the juvenile board for students who are served in the JJAEP whose placement was not made on the basis of expulsion required under Education Code 37.007(a) or (e);
3. Establishes that a student may be placed in the JJAEP if the student engages in serious misbehavior, as defined by Education Code 37.007(c);
4. Identifies and requires a timely placement and specifies a term of placement for expelled students for whom the district has received a notice under Family Code 52.041(d);

5. Establishes services for the transitioning of expelled students to the district before the completion of the student's placement in the JJAEP;

6. Establishes a plan that provides transportation services for students placed in the JJAEP;

7. Establishes the circumstances and conditions under which a juvenile may be allowed to remain in the JJAEP setting once the juvenile is no longer under juvenile court jurisdiction; and

8. Establishes a plan to address special education services required by law.

Education Code 37.011(k)-(m)

The memorandum of understanding must be submitted to TJJD no later than October 1 of each year. *37 TAC 348.200(c)*

Placement in JJAEP Every expelled student who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program. *Education Code 37.010(a)*

Operating Requirements The JJAEP shall be subject to a written operating policy developed by the local juvenile justice board and submitted to the TJJD for review and comment. The JJAEP is not subject to a requirement imposed by Education Code Title II, other than a reporting requirement or a requirement imposed by Education Code Chapters 37, 39, or 39A. *Education Code 37.011(g)*

Student Code of Conduct The JJAEP shall adopt a Student Code of Conduct in accordance with Education Code 37.001. *Education Code 37.011(c); 37 TAC 348.224*

Educational Program The JJAEP shall focus on English language arts, mathematics, science, social studies, and self-discipline.

Assessment The JJAEP shall administer assessment instruments under Education Code Chapter 39, Subchapter B.

Equivalency The JJAEP shall offer a high school equivalency program.

Review of Progress The juvenile board or the board's designee, with the parent or guardian of each student, shall regularly review the student's academic progress. In the case of a high school student, the board or the board's designee, with the student's parent or guardian, shall review the student's progress toward meeting high school graduation requirements and shall establish a specific graduation plan for the student. The program is not required to provide a course nec-

essary to fulfill a student's high school graduation requirements other than a course specified above.

Education Code 37.011(d)

Days and Hours

The JJAEP must operate at least seven hours per day and 180 days per year, except that a JJAEP may apply to the TJJD for a waiver of the 180-day requirement. The commissioner may not grant a waiver to a JJAEP for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a district served by the program. *Education Code 37.011(f)*

Performance Reports

TJJD completes a performance assessment report as required by the General Appropriations Act. At mandatory JJAEPs (i.e., JJAEPs whose operation is required by law), the JJAEP administrator must provide a copy of the report to the juvenile board and the superintendent of each school district that participates in the JJAEP. *37 TAC 348.300*

Emergency Placements

The principal or the principal's designee is not prohibited from ordering the immediate placement of a student in a disciplinary alternative education program (DAEP) if the principal or designee reasonably believes that the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with students in class, with the ability of students to learn, or with the operation of school or a school-sponsored activity.

DAEP

Expulsion

A principal or designee may order the immediate expulsion of a student if the principal or designee reasonably believes that such action is necessary to protect persons or property from imminent harm.

Procedure

At the time of an emergency placement or an emergency expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a DAEP or expulsion may be made on a nonemergency basis. Within a reasonable time, but not later than the 10th day after the placement or expulsion, the student shall be accorded the appropriate due process required for a removal or an expulsion. [See FOA, FOC, and FOD]

Single Incident

The principal or principal's designee may order the emergency placement or expulsion of a student based on a single incident of behavior by the student.

Students with Disabilities

If the student is a student with disabilities who receives special education services, the emergency placement is subject to federal law and regulations and must be consistent with the consequences that would apply under Education Code Chapter 37, Subchapter A, to a student without a disability. [See FOF]

Immunity

A principal or designee is not liable in civil damages for an emergency placement.

Education Code 37.019

Title 5 Felony or Aggravated Robbery

A board or designee, after an opportunity for a hearing may expel a student and elect to place the student in an alternative setting as provided below if:

1. The student has been arrested for, charged with, referred to a juvenile court for, received deferred prosecution for, received probation for, received deferred adjudication for, found by a court or jury to have engaged in, or been convicted of, conduct defined as a felony offense in Penal Code, Title 5 [see FOC(LEGAL)] or the felony offense of aggravated robbery under Penal Code 29.03; and

2. The board or the board's designee determines that the student's presence in the regular classroom:

    a. Threatens the safety of other students or teachers;

    b. Will be detrimental to the educational process; or

    c. Is not in the best interests of the district's students.

A board or designee may expel the student and order the placement regardless of:

1. The date the conduct occurred;

2. The location of the conduct;

3. Whether the conduct occurred while the student was enrolled in the district; or

4. Whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.

Alternative Setting

The student must be placed in:

1. A juvenile justice alternative education program (JJAEP), if a district is located in a county that operates a JJAEP or the district contracts with the juvenile board of another county for the provision of a JJAEP; or

2. A DAEP.

Duration of Placement

Notwithstanding Education Code Section 37.009(c) or (d) (placements beyond one year) or any other provision of Education Code Chapter 37, Subchapter C, the student is subject to the placement until:

1. The student graduates from high school;

2. The charges are dismissed or reduced to a misdemeanor offense; or

3. The student completes the term of the placement or is assigned to another program

These provisions continue to apply if the student transfers to another district in the state.

The student is entitled to periodic review [see FOC].

Any decision of a board or designee under the above provisions is final and may not be appealed.

The above provisions apply notwithstanding any other provision of Education Code Chapter 37, Subchapter A, except that Section 37.007 (expulsion) prevails to the extent of a conflict.

Education Code 37.0081

Registered Sex Offenders

The following provisions apply to a student who is required to register as a sex offender under Code of Criminal Procedure, Chapter 62 (Chapter 62), but not to a student who is no longer required to register as a sex offender, including a student who receives an exemption from registration or a student who receives an early termination of the obligation to register.

Applicability

Removal from Regular Classroom

Notwithstanding any provision of Education Code Chapter 37, Subchapter A, on receiving notice under Code of Criminal Procedure article 15.27 or Chapter 62 that a student is required to register as a sex offender, a district shall remove the student from the regular classroom and determine the appropriate placement.

Education Code 37.302–.303

Student Under Court Supervision

A district shall place a student who is a registered sex offender and who is under any form of court supervision, including probation, community supervision, or parole, in the appropriate alternative education program for at least one semester.

If a student transfers to another district during the placement, the district to which the student transfers may:

1. Require the student to complete an additional semester in the appropriate alternative education program without conducting a review of the student's placement for that semester; or
2. Count any time spent by the student in an alternative education program in the district from which the student transfers toward the mandatory placement requirement.

Education Code 37.304

Student Not Under Court Supervision

A district may place a student who is a registered sex offender and who is not under any form of court supervision in the appropriate alternative education program for one semester or in the regular classroom. A district may not place the student in the regular classroom if the board or designee determines that the student's presence in the regular classroom:

1. Threatens the safety of other students or teachers;
2. Will be detrimental to the educational process; or

3. Is not in the best interests of the district's students.

Education Code 37.305

Appropriate Program

Except as provided below, a district shall place a student who is required by the board or designee to attend an alternative education program in a DAEP. *Education Code 37.309*

Exception

A district shall place the student in a JJAEP if:

1. The memorandum of understanding between the district and juvenile board provides for the placement of students who are registered sex offenders in JJAEP; or

2. A court orders the placement of the student in a JJAEP.

A JJAEP is entitled to funding for the student in the same manner as for students who are subject to discretionary expulsion.

Education Code 37.309–.310

Review

At the end of the first semester of a student's placement, a board or designee shall convene a committee to review the placement.

Review Committee

The committee must be composed of:

1. A classroom teacher from the campus to which the student would be assigned were the student not placed in an alternative education program;

2. The student's parole or probation officer or, in the case of a student who does not have a parole or probation officer, a representative of the local juvenile probation department;

3. An instructor from the alternative education program to which the student is assigned;

4. A district designee selected by the board or designee; and

5. A school counselor employed by the district.

Recommendation

The committee by majority vote shall determine and recommend to the board or designee whether the student should be returned to the regular classroom or remain in the alternative education program.

If the committee recommends that the student be returned to the regular classroom, a board or designee shall return the student to the regular classroom unless the board or designee determines that the student's presence in the regular classroom:

1. Threatens the safety of other students or teachers;

2. Will be detrimental to the educational process; or

3. Is not in the best interests of the district's students.

If the committee recommends that the student remain in the alternative education program, a board or designee shall continue the student's placement in the alternative education program unless the board or designee determines that the student's presence in the regular classroom:

1. Does not threaten the safety of other students or teachers;
2. Will not be detrimental to the educational process; and
3. Is not contrary to the best interests of the district's students.

If a board or designee determines that the student should remain in an alternative education program, the board or designee shall reconvene the committee before the beginning of each school year to review the student's placement in an alternative education program.

Education Code 37.306

Appeal

A student or the student's parent or guardian may appeal a decision by a board or designee to place the student in an alternative education program by requesting a conference among the board or designee, the student's parent or guardian, and the student. The conference is limited to the factual question of whether the student is required to register as a sex offender under Chapter 62.

If a board or designee determines at the conclusion of the conference that the student is required to register as a sex offender, the student is subject to placement in an alternative education program.

The decision of a board or designee is final and may not be appealed.

Education Code 37.311

Liability

The above provisions regarding placement of a student who is a registered sex offender do not:

1. Waive any liability or immunity of a governmental entity or its officers or employees; or
2. Create any liability for or a cause of action against a governmental entity or its officers or employees.

Education Code 37.312

Special Education Student	The placement of a student with a disability who receives special education services must be made in compliance with the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.). The review of the student's placement may be made only by a duly constituted ARD committee [see EHBAB]. The ARD committee may request that a board or designee convene a review committee to assist in conducting the review. *Education Code 37.307*
Transfer Students	Except where a student under court supervision transfers during a mandatory placement, a district shall determine whether to place a transfer student who is a registered sex offender in the appropriate alternative education program or in a regular classroom. A district shall follow the procedures at Review, above, in making the determination. *Education Code 37.308*

Students with Disabilities Under Section 504

A district shall conduct an evaluation in accordance with 34 C.F.R. 104.35(b) before taking any action with respect to any significant change in placement of a student with a disability who needs or is believed to need special education and related services. *34 C.F.R. 104.35(a)*

A district may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent that the district would take disciplinary action against nondisabled students. The due process procedures afforded under Section 504 do not apply to such disciplinary action. *29 U.S.C. 705(20)(C)(iv)*

Note: The provisions below apply only to students eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA).

Students Receiving Special Education Services

ARD Committee Required

Except as set forth below, the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal (ARD) committee. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations. *Education Code 37.004(a)-(b)*

The methods adopted in the Student Code of Conduct [see FO] for discipline management and for preventing and intervening in student discipline problems must provide that a student who is enrolled in the special education program may not be disciplined in a manner that results in a change in the student's educational placement for bullying, harassment, or making hit lists until an ARD committee meeting has been held to review the conduct. *Education Code 37.001(b-1)*

DAEP Placement Not Solely for Educational Purposes

A student with a disability who receives special education services may not be placed in a disciplinary alternative education program (DAEP) solely for educational purposes. A teacher in a DAEP who has a special education assignment must hold an appropriate certificate or permit for that assignment. *Education Code 37.004(c)-(d)*

Removal for 10 Days or Less

School personnel may remove a student with a disability who violates a student code of conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, to the extent those alternatives are applied to children without disabilities. *20 U.S.C. 1415(k)(1)(B); 34 C.F.R. 300.530(b)(1)*

Services During Removal

A district is required to provide services during the period of removal if the district provides services to a child without disabilities who is similarly removed. *34 C.F.R. 300.530(d)*

Subsequent Removals of 10 Days or Less

School personnel may remove the student for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement (see below). *34 C.F.R. 300.530(b)(1)*

Services During Removal

After a student has been removed from his or her current placement for 10 school days in the same school year, during any subsequent removal of 10 consecutive school days or less, school personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's individualized education program (IEP). *20 U.S.C. 1415(k)(1)(D); 34 C.F.R. 300.530(d)(4)*

Notice of Procedural Safeguards

Not later than the date on which the decision to take the disciplinary action is made, a district shall notify the student's parents of the decision and of all procedural safeguards [see EHBAE]. *20 U.S.C. 1415(k)(1)(H)*

Removals That Are a Change in Placement

Any disciplinary action that would constitute a change in placement may be taken only after the student's ARD committee conducts a manifestation determination review.

Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of functional behavioral assessments; positive behavioral interventions, strategies, and supports; behavioral intervention plans; and the manifestation determination review [see Manifestation Determination, below].

Education Code 37.004(b)

Behavior Assessment and Intervention

If a district takes a disciplinary action regarding a student with a disability who receives special education services that constitutes a change in placement under federal law, the district shall:

1. Not later than the 10th school day after the change in placement:

    a. Seek consent from the student's parent or person standing in parental relation to the student to conduct a functional behavioral assessment of the student, if a functional behavioral assessment has never been conducted

on the student or the student's most recent functional behavioral assessment is more than one year old; and

b. Review any previously conducted functional behavioral assessment of the student and any behavior improvement plan or behavioral intervention plan developed for the student based on that assessment; and

2. As necessary, develop a behavior improvement plan or behavioral intervention plan for the student if the student does not have a plan or, if the student has a behavior improvement plan or behavioral intervention plan, revise the student's plan.

Education Code 37.004(b-1)

Change in Placement

For purposes of disciplinary removal of a student with a disability, a change in placement occurs if a student is:

1. Removed from the student's current educational placement for more than 10 consecutive school days; or

2. Subjected to a series of removals that constitute a pattern because:

a. The series of removals total more than 10 school days in a school year;

b. The student's behavior is substantially similar to the student's behavior in the previous incidents that resulted in the series of removals; and

c. Additional factors exist, such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

The district determines, on a case-by-case basis, whether a pattern of removals constitutes a change in placement. The district's determination is subject to review through due process and judicial proceedings.

34 C.F.R. 300.536

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student who violates a code of student conduct. *20 U.S.C. 1415(k)(1)(A)*

Manifestation Determination

Within 10 school days of any decision to change the placement of a student because of a violation of a code of student conduct, a district, parents, and relevant members of the ARD committee (as determined by the parent and the district) shall review all relevant information in the student's file, including the student's IEP, any

teacher observations, and any relevant information provided by the parents to determine whether the conduct in question was:

1. Caused by, or had a direct and substantial relationship to, the student's disability; or

2. The direct result of the district's failure to implement the IEP.

If the district, the parent, and relevant members of the ARD committee determine that either of the above is applicable, the conduct shall be determined to be a manifestation of the student's disability.

If the district, the parent, and relevant members of the ARD committee determine the conduct was the direct result of the district's failure to implement the IEP, the district must take immediate steps to remedy those deficiencies.

20 U.S.C. 1415(k)(1)(E); 34 C.F.R. 300.530(e)

Not a Manifestation

If the determination is that the student's behavior was not a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as for students without disabilities. The ARD committee shall determine the interim alternative educational setting. *20 U.S.C. 1415(k)(1)(C), (k)(2); 34 C.F.R. 300.530(c)*

Expulsion

In a county with a juvenile justice alternative education program (JJAEP) [see FODA], a district must invite the administrator of the JJAEP or the administrator's designee to an ARD committee meeting convened to discuss the discretionary expulsion under Education Code 37.007 of a student with a disability. The district must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. A copy of the student's current IEP must be provided to the JJAEP representative with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP. *19 TAC 89.1052*

Services During Removal

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.

2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting.

34 C.F.R. 300.530(d)(1)-(2)

For a student with a disability who was expelled under a discretionary expulsion under Education Code 37.007, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP if the JJAEP provides written notice to the district of specific concerns that the student's education or behavioral needs cannot be met in JJAEP.

The district must invite the JJAEP administrator or the administrator's designee to the meeting and must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP may participate in the meeting to the extent that the meeting relates to the student's continued placement in JJAEP.

19 TAC 89.1052

Manifestation

If the district, the parents, and relevant members of the ARD committee determine that the conduct was a manifestation of the student's disability, the ARD committee shall:

1. Conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan (BIP) for the student; or

2. If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

Except as provided at Special Circumstances, below, the ARD committee shall return the student to the placement from which the student was removed, unless the parent and the district agree to a change in placement as part of the modification of the BIP.

20 U.S.C. 1415(k)(1)(F); 34 C.F.R. 300.530(f)

Special Circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the Texas Education Agency (TEA) or a school district;
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of TEA or a school district; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of TEA or the district.

20 U.S.C. 1415(k)(1)(G); 34 C.F.R. 300.530(g)

The ARD committee shall determine the interim alternative education setting. *20 U.S.C. 1415(k)(2)*

Services During Removal

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting.

34 C.F.R. 300.530(d)(1)

Appeals

A parent who disagrees with a placement decision or the manifestation determination may request a hearing. A district that believes that maintaining a current placement of a student is substantially likely to result in injury to the student or others may request a hearing. *20 U.S.C. 1415(k)(3)(A); 34 C.F.R. 300.532(a); 19 TAC 89.1151* [See EHBAE]

Placement During Appeals

When an appeal has been requested by a parent or a district, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the student's assignment to the alternative setting, whichever oc-

curs first, unless the parent and district agree otherwise. *20 U.S.C. 1415(k)(4); 34 C.F.R. 300.533*

Reporting Crimes

Federal law does not prohibit a district from reporting a crime committed by a student with a disability to appropriate authorities. If a district reports a crime, the district shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the district reported the crime. A district may transmit records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA). *20 U.S.C. 1415(k)(6); 34 C.F.R. 300.535* [See FL]

Students Not Yet Identified

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in the IDEA if a district had knowledge that the student had a disability before the behavior that precipitated that disciplinary action occurred. *20 U.S.C. 1415(k)(5)(A); 34 C.F.R. 300.534(a)*

District Knowledge

A district shall be deemed to have knowledge that a student has a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the student expressed concern in writing to supervisory or administrative personnel of the district, or to the teacher of the student, that the student was in need of special education and related services;
2. The parent requested an evaluation of the student for special education and related services; or
3. The student's teacher, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the special education director or to other supervisory personnel of the district.

20 U.S.C. 1415(k)(5)(B); 34 C.F.R. 300.534(b)

Exception

A district shall not be deemed to have knowledge that the student had a disability if:

1. The parent has not allowed an evaluation of the student;
2. The parent has refused services; or
3. The student has been evaluated and it was determined that the student did not have a disability.

20 U.S.C. 1415(k)(5)(C); 34 C.F.R. 300.534(c)

If a district does not have knowledge (as described above), before taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

20 U.S.C. 1415(k)(5)(D); 34 C.F.R. 300.534(d)

Behavior Management Techniques

It is the policy of the state to treat all students with dignity and respect, including students with disabilities who receive special education services. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities. *Education Code 37.0021(a); 19 TAC 89.1053(j)*

[For restrictions on aversive techniques, see FO.]

Rules on Restraint and Seclusion

The commissioner by rule shall adopt procedures for the use of restraint and time-out by a district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services. The procedures must be consistent with Education Code 37.0021(d). *Education Code 37.0021(d)*

School Peace Officers

This provision and any rules or procedures adopted under this provision apply to a peace officer only if the peace officer:

1. Is employed or commissioned by a district; or
2. Provides, as a school resource officer, a regular police presence on a district campus under a memorandum of understanding between the district and a local law enforcement agency.

Education Code 37.0021(h); 19 TAC 89.1053(m)

Exceptions

Education Code 37.0021 (use of confinement, seclusion, restraint, and time-out) does not apply to:

1. A peace officer, while performing law enforcement duties, except as provided above [see School Peace Officers] and by

Education Code 37.0021(i) [see Restraint, Documentation, below];

2. Juvenile probation, detention, or corrections personnel; or

3. An educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Law Enforcement Duties

"Law enforcement duties" means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure.

Education Code 37.0021(b)(4), (g); 19 TAC 89.1053(m), (n)

Further, Education Code 37.0021 does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

1. The student possesses a weapon; and

2. The confinement is necessary to prevent the student from causing bodily harm to the student or another person.

For these purposes, "weapon" includes any weapon described under Education Code 37.007(a)(1). [See FNCG]

Education Code 37.0021(f)

Peace Officer or Security Personnel Use of Restraint or Taser

A peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity must not restrain or use a chemical irritant spray or Taser on a student enrolled in fifth grade or below, unless the student poses a serious risk of harm to the student or another person [see FO defining Taser]. *19 TAC 89.1053(l)*

Confinement

A student with a disability who receives special education services may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique. *Education Code 37.0021(a)*

Seclusion

A district employee or volunteer or an independent contractor of a district may not place a student in seclusion. *Education Code 37.0021(c)*

"Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

1. Is designed solely to seclude a person; and

2. Contains less than 50 square feet of space.

Education Code 37.0021(b)(2)

Restraint

"Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body. *19 TAC 89.1053(b)(2)*

The following provisions do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced above does not include:

1. Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
2. Limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;
3. Limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the IEP as required by 34 C.F.R. 300.324(a)(2)(i) to promote student learning and reduce and/or prevent the need for ongoing intervention; or
4. Seat belts and other safety equipment used to secure students during transportation.

19 TAC 89.1053(f)

Limitations on Use of Restraint

A school employee, volunteer, or independent contractor may use restraint only in an emergency and with the following limitations:

1. Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.
2. Restraint shall be discontinued at the point at which the emergency no longer exists.
3. Restraint shall be implemented in such a way as to protect the health and safety of the student and others.
4. Restraint shall not deprive the student of basic human necessities.

19 TAC 89.1053(c)

Emergency

"Emergency" means a situation in which a student's behavior poses a threat of:

1. Imminent, serious physical harm to the student or others; or
2. Imminent, serious property destruction.

19 TAC 89.1053(b)(1)

Training

Training for school employees, volunteers, or independent contractors regarding the use of restraint shall be provided according to the requirements set forth at 19 Administrative Code 89.1053(d).

Documentation

In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the documentation and notification requirements set forth at 19 Administrative Code 89.1053(e).

A district shall report electronically to TEA, in accordance with standards provided by commissioner rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. The report must be consistent with the requirements adopted by commissioner rule for reporting the use of restraint involving students with disabilities.

Education Code 37.0021(i)

Time-Out

"Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

1. That is not locked; and
2. From which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

19 TAC 89.1053(b)(3)

Limitations on Use of Time-Out

A school employee, volunteer, or independent contractor may use time-out with the following limitations:

1. Physical force or threat of physical force shall not be used to place a student in time-out.
2. Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or behavior improvement plan or behavioral intervention plan if it is utilized

on a recurrent basis to increase or decrease targeted behavior.

3. Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

19 TAC 89.1053(g)

Training Training for school employees, volunteers, or independent contractors regarding the use of time-out shall be provided according to the requirements set forth at 19 Administrative Code 89.1053(h).

Documentation Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the district must document each use of time-out prompted by a behavior of the student specified in the student's behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

19 TAC 89.1053(i)

USE OF ISOLATION ROOMS AND THERAPEUTIC HOLDING

1. HISD provides instructional and related services for eligible students with disabilities. The admission, review, and dismissal (ARD) committee develops the individualized education program (IEP) for eligible students. The IEP identifies the instructional program, related services, and any disciplinary procedures to be followed for each student. See References (a), (c), and (e). Students are expected to follow the school rules outlined in the Student Code of Conduct and the school-based discipline management system, unless an ARD committee has developed a behavior support plan (BSP) as part of the IEP. See References (a) and (g). For each student with disabilities, the ARD committee determines whether the student will follow the disciplinary procedures contained in Reference (g) or the disciplinary procedures contained in a BSP. The ARD committee makes this decision by considering the nature and severity of the student's disability regarding the following:

   - The student's capacity to understand Board policy regarding student behavior as contained in Reference (g) and his or her school-based discipline management system;
   - The student's capacity to follow Board policy regarding student behavior as contained in Reference (g) and his or her school-based discipline management system; and
   - The student's demonstration of in-school behaviors that may require special education intervention techniques.

   If the ARD committee determines that, due to the nature or severity of the student's disability, the disciplinary procedures in Reference (g) are inappropriate and special education intervention is required, the ARD committee must develop a BSP and a behavioral IEP. See Reference (f). The BSP identifies disciplinary consequences and procedures to be implemented for identified behaviors. The ARD committee should develop a behavioral IEP that correlates with the BSP to assist the student in developing appropriate behaviors and coping skills. As part of the BSP, the ARD committee may recommend physical restraint as a behavioral consequence for identified inappropriate behaviors. The ARD committee must consider the student's age and emotional disability before making such a recommendation.

DEFINITIONS

2. For the purpose of this regulation, the following definitions apply:

PHYSICAL RESTRAINT

a. Physical restraint is a physical intervention technique that restricts the free movement of all or a portion of the student's body through the use of physical force or a mechanical device. Physical restraint is utilized only in an emergency by a core of trained personnel on each campus when the student's behavior poses a threat of imminent, serious, physical harm to the student or others or imminent, serious property destruction. The restraint includes prevention and de-escalation techniques and alternatives to ensure the health and safety of students and staff members. See References (a), (b), and (d).

ISOLATION ROOM

b. State law prohibits schools from confining students with disabilities in a locked box, locked closet, or other specially designed locked space. See References (a), (b), and (d). Therefore, isolation rooms are no longer permitted as a behavior intervention in the Houston Independent School District (HISD).

REQUIRED TRAINING FOR SPECIAL EDUCATION SCHOOL STAFF

3. Physical restraint must only be utilized as a special education intervention by trained special education staff members and school personnel who have received appropriate certification. The District provides training for staff certification. See Reference (e). The Special Education psychologists or regional Special Education support staff members provide training for school staff members on the use of physical restraint as a behavioral consequence. Special Education maintains documentation including the names of certified administrators, special education teachers, general education teachers, teacher assistants, and other school staff members, and the dates training and certification were attained.

USE OF PHYSICAL RESTRAINT

4. A District staff person must be trained and certified in physical restraint in order to use such physical intervention as a behavioral consequence as identified in a student's BSP. The physical restraint technique must be demonstrated to the parent at the ARD meeting during the development of the BSP. The parent must sign the ARD/IEP agreement before the intervention can be used. The District staff person may use physical restraint within the scope of his or her duties, if physical restraint:

- Is identified in the student's plan as a behavioral consequence to prevent a student who poses a threat of imminent harm, or is self abusive and or aggressive, from harming himself or herself, others, or property;

- Complies with the contingencies of a comprehensive BSP when less intrusive behavioral consequences are not effective;
- Is necessary to protect property from imminent, serious damage or to obtain a weapon or other dangerous object from a student in order to preserve a safe school environment; or
- Is necessary to remove a student who is refusing a lawful request of a District employee, including removal from a classroom or other school property to restore or preserve order.

See Reference (a).

DOCUMENTATION AND NOTIFICATION OF PHYSICAL RESTRAINT

5. School employees should implement the following documentation and notification requirements after the use of restraint. See References (a) and (f).

NOTIFICATION OF ADMINISTRATOR

a. The campus administrator or designee must be notified verbally or in writing regarding the use of restraint on the day the restraint is utilized.

VERBAL NOTIFICATION OF PARENT

b. The parent will be verbally notified regarding the use of restraint on the day the restraint is utilized.

WRITTEN NOTIFICATION TO PARENT

c. The parent must be mailed or provided written notification of the use of restraint within one school day.

SPECIAL EDUCATION ELIGIBILITY FOLDER

d. Written documentation of the use of restraint must be placed in the student's special education eligibility folder in a timely manner, so that the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning, and or the creation or revision of the BSP.

DOCUMENTED INFORMATION

e. Written notification to the parent(s) and documentation to the student's special education eligibility folder should include the following information:

- The student's name;
- The name of school staff member(s) administering physical restraint;
- The date of physical restraint;
- The beginning and ending time;
- The location of physical restraint;

- The nature of restraint;
- A description of activity student engaged in immediately preceding physical restraint;
- The behavior that prompted physical restraint;
- Attempted de-escalation techniques and alternatives; and
- Parent contact and notification.

The data regarding the use of physical restraint must be reported to the Texas Education Agency through the Public Education Information Management System (PEIMS). See Reference (b).

CONSULTATION

6. This regulation does not require consultation.

MAINTENANCE RESPONSIBILITY

7. The special education coordinator, Behavior Services, is responsible for maintenance of this regulation.

REFERENCES:

(a) Board Policy FOF(LEGAL)

(b) 19 Texas Administrative Code §89.1053 Procedures for Use of Restraint and Time-Out

(c) Individuals with Disabilities Education Act

(d) Texas Education Code §37.0021 Procedures for Use of Restraint and Time-Out

(e) Admission, Review, and Dismissal and Individual Education Program Committee Report

(f) Behavior Support Manual

(g) The Student Code of Conduct

Authorized Fees

A board may require payment of:

1. A fee for materials used in any program in which the resultant product in excess of minimum requirements becomes, at the student's option, the personal property of the student, if the fee does not exceed the cost of materials.
2. Membership dues in student organizations or clubs and admission fees or charges for attending extracurricular activities, if membership or attendance is voluntary.
3. A security deposit for the return of materials, supplies, or equipment.
4. A fee for personal physical education and athletic equipment and apparel, although any student may provide his or her own equipment or apparel if it meets reasonable requirements and standards relating to health and safety established by the board.
5. A fee for items of personal use or products that a student may purchase at the student's option, such as student publications, class rings, annuals, and graduation announcements.
6. A fee specifically permitted by any other statute.
7. A fee for an authorized, voluntary student health and accident benefit plan.
8. A reasonable fee, not to exceed the actual annual maintenance cost, for the use of musical instruments and uniforms owned or rented by a district.
9. A fee for items of personal apparel that become the property of the student and that are used in extracurricular activities.
10. A parking fee [see CLC] or a fee for identification cards.
11. A fee for a driver training course, not to exceed the actual district cost per student in the programs for the current school year.
12. A fee for a course offered for credit that requires the use of facilities not available on the school premises or the employment of an educator who is not part of the school's regular staff, if participation in the course is at the student's option. The board may not charge a fee for a course requested by parents according to Education Code 28.003 [see EHA].
13. A fee for a course offered during summer school, except that the board may charge a fee for a course required for gradua-

tion only if the course is also offered without a fee during the regular school term.

14. A reasonable fee for transportation of a student who lives within two miles of the school the student attends to and from that school, except that the board may not charge a fee for transportation for which the district receives funds under Education Code 48.151(d).

15. A reasonable fee, not to exceed $50, for costs associated with an educational program offered outside of regular school hours through which a student who was absent from class receives instruction voluntarily for the purpose of making up the missed instruction and meeting the level of attendance required under Education Code 25.092. [See FEC] The district must provide a written form to be signed by the student's legal guardian stating that this fee would not create a financial hardship or discourage the student from attending the program. The district may only assess the fee if the student returns the signed form.

16. If the district does not receive any funds under Education Code 48.151 and does not participate in a county transportation system for which an allotment is provided under Education Code 48.151(i), a reasonable fee for the transportation of a student to and from the school the student attends.

Education Code 11.158(a), (d), (h)

As a public entity, a school district may charge a fee or tuition only if it is specifically authorized to do so, either by statute or under the constitution. *Atty. Gen. Op. JC-0207 (2000)*

Hybrid or Virtual Course

A district may charge a fee for a hybrid or virtual course provided to a student who is not eligible to enroll in a public school in this state or is not enrolled in the district. *Education Code 30B.055* [See EHDE]

Prohibited Fees

A board may not charge fees for:

1. Instructional materials, workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course, except as authorized under the Education Code.

2. Field trips required as part of a basic educational program or course.

3. Any specific form of dress necessary for any required educational program or diplomas.

4. Instructional costs for necessary school personnel employed in any course or educational program required for graduation.
5. Library materials required to be used for any educational course or program, other than fines assessed for lost, damaged, or overdue materials.
6. Admission to any activity the student is required to attend as a prerequisite to graduation.
7. Admission to or examination in any required educational course or program.
8. Lockers.

Personal Supplies

Students may be required to furnish personal or consumable items, including pencils, paper, pens, erasers, notebooks, and school uniforms, except that students who are educationally disadvantaged may be required to furnish school uniforms only as provided by Education Code 11.162. [See FNCA]

School Store

A district may operate a school store where students may purchase school supplies and materials.

Waiver of Fees

A district shall adopt reasonable procedures for waiving a deposit or fee if a student or the student's parent or guardian is unable to pay it. This policy shall be posted in a central location in each school facility, in the school policy manual, and in the student handbook.

Postsecondary Instructional Programs

A board may charge reasonable fees for goods and services provided in connection with any postsecondary instructional program, including career and technology, adult, veterans, or continuing education, community service, evening school, and high school equivalency programs.

Education Code 11.158(b)-(c), (e)-(g)

WAIVER OF FEES

Upon receipt by the District of reliable proof that a student and his or her parent or guardian are unable to pay a fee or deposit required by the school, such fee or deposit shall be waived. Such student and his or her parent or guardian must present evidence of their inability to pay to the appropriate principal who shall determine eligibility for a fee waiver.

Note: The following legal provisions address the notification requirements and right of access to students when DFPS investigates reports of abuse and neglect at school. For additional legal provisions addressing reporting child abuse and neglect and investigations generally, see FFG.

Child Protective Investigations

A Texas Department of Family and Protective Services (DFPS) investigation of a report of child abuse or neglect under Family Code Chapter 261 may include an interview and examination of the subject child, which may be conducted at any reasonable time and place, including the child's school. A school official may not deny the request of an investigator, investigating a report of suspected child abuse or neglect, to interview, at school, a student who is an alleged victim. A school official may not condition granting the request on a requirement that school personnel, such as a counselor, attend the interview. *Family Code 261.302(a), (b); Atty. Gen. Op. DM-476 (1998)*

A person that has confidential locating or identifying information regarding a family that is the subject of an investigation under Family Code Chapter 261 shall release that information to DFPS on request. The release of information to DFPS by a person is not subject to Government Code 552.352 or any other law providing liability for the release of confidential information. *Family Code 261.303(e)*

Special Investigations

On receipt of a report of alleged or suspected child abuse or neglect in a public school, DFPS shall perform an investigation as provided by Family Code Chapter 261 and the rules adopted thereunder.

The Special Investigations program (SI) of the Child Protective Investigations division (CPI) of DFPS investigates allegations of abuse or neglect of a child by school personnel or volunteers in a school setting.

Family Code 261.406(a); 40 TAC 707.597-.625

Definitions

"School personnel and volunteers" means persons who have access to children in a school setting and are providing services to or caring for the children. School personnel include but are not limited to school employees, contractors, school volunteers, school bus drivers, school cafeteria staff, school resource officers and contracted police officers, and school custodians.

"School setting" means the physical location of a child's school or of an event sponsored or approved by the child's school, or any

other location where the child is in the care, custody, or control of school personnel in their official capacity, including transportation services. This does not include:

1. School settings involving only children in facilities regulated by the Texas Health and Human Services Commission (HHSC) when HHSC contracts with the local district to provide education services; or

2. School settings that are a part of child care operations regulated by the Child Care Licensing division of HHSC.

40 TAC 707.605(a)(6)-(7)

Notice to School Personnel

Prior to conducting an investigation of school personnel or volunteers, SI must notify the school principal (or the principal's supervisor if the school principal is an alleged perpetrator) of the fact that a report has been assigned for investigation, the nature of the allegations contained in the report, and the date and time SI plans to visit the school campus to begin the investigation.

SI must also orally notify the superintendent about the investigation. If the superintendent is the alleged perpetrator, SI must instead orally notify the president of the school board.

SI must request that the school personnel notified of the investigation not alert the alleged perpetrator or others regarding the report until SI has had an opportunity to interview the alleged perpetrator.

Family Code 261.105(d); 40 TAC 707.615

No Interference with Investigation

School officials or other persons related to the school setting may not interfere with an investigation of a report of child abuse or neglect conducted by DFPS.

Interviews on School Premises

Interviews and examinations in a school investigation may take place on or off the school premises, as deemed appropriate by SI, pursuant to all applicable standards. SI will notify appropriate school personnel prior to conducting an interview or visual inspection on school premises.

Presence of School Personnel

SI may request that school personnel or volunteers not be present during the interview or visual inspection of an alleged victim, an alleged perpetrator, an adult or child witness, or any other person who may have information relevant to the investigation if the investigator determines that:

1. The presence of school personnel or volunteers would compromise the integrity of the investigation; or

2. A better interview or examination of the child would result without school personnel or volunteers being present.

Family Code 261.303(a); 40 TAC 707.619(a)

Report of Findings

After the completion of an investigation, SI must provide a report of the investigation, redacted to remove the identity of the reporter, to the Texas Education Agency (Director of Education Investigations) for an investigation concerning an employee of a public school. On request, SI must also provide a redacted copy of the report to the following:

1. State Board for Educator Certification;
2. The president of the local school board;
3. The superintendent of the district unless the superintendent is the alleged perpetrator; and
4. The school principal, unless the principal is the alleged perpetrator.

SI is not required to provide notice to a school official if it administratively closes a report of abuse or neglect prior to notifying school officials that DFPS received a report of abuse or neglect in the school setting.

Family Code 261.406(b); 40 TAC 707.623

Prohibited Law Enforcement Citations

For this provision, a "school offense" means an offense committed by a child enrolled in a public school that is a Class C misdemeanor other than a traffic offense and that is committed on property under the control and jurisdiction of a district. "Child" means a person who is a student and at least 10 years of age and younger than 18 years of age.

A peace officer, law enforcement officer, or school resource officer may not issue a citation to a child who is alleged to have committed a school offense. Education Code Chapter 37, Subchapter E-1 (Criminal Procedure) does not prohibit a child from being taken into custody under Family Code 52.01 (described below).

Education Code 37.141, .143

Students Taken into Custody

For the following provisions, "child" means a person who is:

1. Ten years of age or older and under 17 years of age, or
2. Seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent con-

duct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Family Code 51.02(2)

A child may be taken into custody under Family Code Title 3 (Juvenile Justice Code):

1. Pursuant to an order of the juvenile court.
2. Pursuant to the laws of arrest.
3. By a law enforcement officer, including a district peace officer, if there is probable cause to believe the student has engaged in a criminal violation, delinquent conduct, conduct indicating a need for supervision, or conduct that violates a condition of probation.
4. By a probation officer, if there is probable cause to believe the student has violated a condition of probation or a condition of release.
5. Pursuant to a directive to apprehend issued by a juvenile court.
6. By a law enforcement officer, to take the child's fingerprints or photograph, as set forth at Family Code 58.0021.

Family Code 52.01(a), 58.0021

[For information regarding when a child may be taken into custody without a court order, see Family Code 262.007, .008, .104, .110.]

Students in Custody

A person taking a child into custody may, if school is in session and the child is a student, bring the child to the campus to which the child is assigned if the principal, the principal's designee, or a peace officer assigned to the campus agrees to assume responsibility for the child for the remainder of the school day. *Family Code 52.02(a)(7)*

Child Abuse Investigation

When a representative of the Department of Family and Protective Services (DFPS) or another lawful authority requests to question or interview an allegedly victimized student at school as part of a child abuse or neglect investigation of the subject student, the following guidelines shall apply:

1. The principal shall verify and record the identity of the DFPS representative or other lawful authority before the interview with the student.
2. The principal shall verify that the student is the subject of the abuse or neglect investigation.
3. The principal may request that a school official be present during the interview. However, a school official shall not deny access to the student or prohibit the interview if the request for a school official to attend the interview is denied.
4. The principal shall cooperate fully with the official's requests regarding the conditions of the interview or questioning.

Other Questioning of Students

When law enforcement officers or other lawful authorities request to question or interview a student at school for any purpose other than a child abuse or neglect investigation of the subject child, the following guidelines shall apply:

1. The principal shall verify and record the identity of the officer or other authority and request an explanation of the need to question or interview the student at school.
2. The principal ordinarily shall make reasonable efforts to notify the student's parent or other person having lawful control of the student, which includes attempted notification via telephone or email within 24 hours. If the interviewer raises what the principal considers to be a valid objection to the notification, the parent shall not be notified.
3. The principal or a designee ordinarily shall be present during the questioning or interview. If the interviewer raises what the principal considers to be a valid objection to a third party's presence, the interview shall be conducted without that person's presence.

Students Taken into Custody

Before a student at school is arrested or taken into custody by a law enforcement officer or other legally authorized person, the principal shall verify the official's identity. To the best of their ability, the principal shall verify the official's authority to take custody of the student and then shall deliver over the student.

The principal shall immediately notify the Superintendent and ordinarily shall notify the parent or other person having lawful control of the student. If the officer or other authorized person raises what the principal considers to be a valid objection to notifying the parent at that time, the principal shall not notify the parent.

[See FO series for notification requirements by the campus behavior coordinator under Education Code Chapter 37.]

Effective Date

This policy shall be effective as of the adoption date, December 10, 2021.