

TERMINATION OF EMPLOYMENT

DF
(LEGAL)

Note: For a detailed treatment of termination and nonrenewal of educator contracts, see policies DF AA and DF AB (Probationary Contracts), and DF BA and DF BB (Term 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) 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:

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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**

Mandatory
Termination

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:

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 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 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 provi-

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sion 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 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 or term contract is void if the employee:

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

Education Code 21.0031(a)

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

1. The employee has completed the requirements for renewal of the certificate or permit;
2. The employee submitted the request for renewal before the expiration date; and

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3. The date the certificate or permit would have expired is before the date SBEC takes action to approve the renewal of the certificate or permit.

Education Code 21.0031(f)

District's Options

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

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

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

Education Code 21.0031(b)

Exception

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

1. The employee requests an extension from SBEC to renew, extend, or otherwise validate the employee's certificate or permit; and
2. Not later than the 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]

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**Report to
Superintendent**

A principal shall report the educator's termination to the superintendent if the conditions set forth at Education Code 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)*

Reasons

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

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

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

16. Conviction of or deferred adjudication for any felony, any crime involving moral turpitude, or other offense listed at DH(LOCAL); or conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony. [See DH]
17. Failure to comply with reasonable District requirements regarding advanced coursework or professional improvement and growth.
18. Disability, not otherwise protected by law, that prevents the employee from performing the essential functions of the job, with or without reasonable accommodation.
19. Any activity, school-connected or otherwise, that, because of publicity given it, or knowledge of it among students, faculty, or the community, impairs or diminishes the employee's effectiveness in the District.
20. Any breach by the employee of an employment contract or any reason specified in the employee's employment contract.
21. Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues.
22. A significant lack of student progress attributable to the educator.
23. Behavior that presents a danger of physical harm to a student or to other individuals.
24. Assault on a person on District property or at a school-related function, or on an employee, student, or student's parent regardless of time or place.
25. Use of profanity in the course of performing any duties of employment, whether on or off school premises, in the presence of students, staff, or members of the public, if reasonably characterized as unprofessional.
26. Falsification of records or other documents related to the District's activities.
27. Falsification or omission of required information on an employment application.
28. Misrepresentation of facts to a supervisor or other District official in the conduct of District business.

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29. Failure to fulfill requirements for state licensure or certification, including passing certification or licensing examinations required by state or federal law or by the District, for the employee's assignment.
30. Failure to maintain licensing and certification requirements, including the completion of required continuing education hours, for the employee's assignment.
31. Failure to complete certification or permit renewal requirements, or failure to fulfill the requirements of a deficiency plan, under an Emergency Permit or a Temporary Classroom Assignment Permit.
32. Any attempt to encourage or coerce a child to withhold information from the child's parent or from other District personnel.
33. Any reason that makes the employment relationship void or voidable, such as a violation of federal, state, or local law.
34. Engaging in or assigning to another individual, whether intentionally or knowingly, an instruction, guidance, activities, or programming prohibited by law. [See EMB]
35. Engaging in or assigning to another individual, whether intentionally or knowingly, diversity, equity, and inclusion duties prohibited by law.
36. Any reason constituting good cause for terminating the contract during its term.

Recommendations
from Administration

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

Superintendent's
Recommendation

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

The Board shall consider such information, as appropriate, in support of recommendations for proposed nonrenewal and shall then act on all recommendations.

Notice of Proposed
Nonrenewal

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

If the notice of proposed nonrenewal does not contain a statement of the reason or all the reasons for the proposed action, and the employee requests a hearing, the District shall give the employee notice of all reasons for the proposed nonrenewal at a reasonable time before the hearing. The initial notice or any subsequent notice shall contain the hearing procedures.

Request for Hearing

If the employee desires a hearing after receiving the notice of proposed nonrenewal, the employee shall notify the Board in writing not later than the 15th day after the date the employee received the notice of proposed nonrenewal.

When a timely request for a hearing on a proposed nonrenewal is received by the presiding officer, the Board shall notify the employee whether the hearing will be conducted by the Board [see Hearing by the Board, below] or an attorney designated by the Board [see Hearing by an Attorney Designated by the Board, below].

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

Hearing by the Board

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

Hearing Procedures

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

1. After consultation with the parties, the presiding officer shall impose reasonable time limits for presentation of evidence and closing arguments.
2. The hearing shall begin with the administration's presentation, supported by such proof as it desires to offer.
3. The employee may cross-examine any witnesses for the administration.

4. The employee may then present such testimonial or documentary proof, as desired, to offer in rebuttal or general support of the contention that the contract be renewed.
5. The administration may cross-examine any witnesses for the employee and offer rebuttal to the testimony of the employee's witnesses.
6. Closing arguments may be made by each party.

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

Board Decision

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

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

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

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

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

Board Review

The Board shall consider the record of the hearing and the attorney's recommendation at the first Board meeting for which notice can be posted, unless the parties agree in writing to a different date. The Board shall notify the employee of the meeting date as soon as it is set. At the meeting, the Board shall allow each party an equal amount of time to present oral arguments. The Board

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

No Hearing

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

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Each District employee shall perform his or her duties in accordance with state and federal law, District policy, and ethical standards. The District holds all employees accountable to the Educators' Code of Ethics. [See DHA(LEGAL)]

Each District employee shall recognize and respect the rights of students, parents, other employees, and members of the community and shall work cooperatively with others to serve the best interests of the District.

An employee wishing to express concern, complaints, or criticism shall do so through appropriate channels. [See DGBA]

**Violations of
Standards of
Conduct**

Each employee shall comply with the standards of conduct set out in this policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to his or her status as a District employee. Violation of any policies, regulations, or guidelines, including intentionally making a false claim, offering a false statement, or refusing to cooperate with a District investigation, may result in disciplinary action, including termination of employment. [See DCD, DCE, and DF series]

Weapons Prohibited

The District prohibits the use, possession, or display of any firearm, location-restricted knife, club, or prohibited weapon, as defined at FNCG, on District property at all times.

Exceptions

No violation of this policy occurs when:

1. Use or possession of a firearm by a specific employee is authorized by Board action [see the CKE series];
2. A District employee who holds a handgun license in accordance with state law stores a handgun or other firearm in a locked vehicle in a parking lot, parking garage, or other parking area provided by the District, provided the handgun or other firearm is not in plain view; or
3. The use, possession, or display of an otherwise prohibited weapon takes place as part of a District-approved activity supervised by proper authorities. [See FOD]

**Electronic
Communication**

Use with Students

A certified employee, licensed employee, or any other employee designated in writing by the Superintendent or a campus principal may use electronic communication, as this term is defined by law, with currently enrolled students only about matters within the scope of the employee's professional responsibilities.

Unless an exception has been made in accordance with the employee handbook or other administrative regulations, an employee

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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. The employee handbook or other administrative regulations shall further detail:

1. Exceptions for family and social relationships;
2. The circumstances under which an employee may use text messaging to communicate with individual students or student groups;
3. Hours of the day during which electronic communication is discouraged or prohibited; and
4. Other matters deemed appropriate by the Superintendent.

In accordance with ethical standards applicable to all District employees [see DHA(LEGAL)], 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	All employees shall be held to the same professional standards in their public use of electronic communication as for any other public conduct. If an employee's use of electronic communication violates state or federal law or District policy, or interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment.
Reporting Improper Communication	In accordance with administrative regulations, an employee shall notify his or her supervisor when a student engages in improper electronic communication with the employee.
Disclosing Personal Information	An employee shall not be required to disclose his or her personal email address or personal phone number to a student.

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Prohibited Classroom Instruction or Activities	An employee is prohibited from intentionally or knowingly engaging in or assigning to another individual instruction, guidance, activities, or programming prohibited by law [see EMB].
Prohibited Diversity, Equity, and Inclusion Duties	An employee shall be subject to disciplinary action, including termination of employment, if the employee, intentionally or knowingly: • Engages in diversity, equity, and inclusion (DEI) duties. • Assigns to another individual DEI duties. [See BT(LEGAL)]
Social Transitioning	An employee shall be prohibited from assisting a District student with social transitioning, as the term is defined in law. This prohibition includes providing any information to a District student about social transitioning or guidelines intended to assist a District student with social transitioning.
Safety Requirements	Each employee shall adhere to District safety rules and regulations and shall report unsafe conditions or practices to the appropriate supervisor.
Harassment or Abuse	An employee shall not engage in prohibited harassment, including sexual harassment, of: 1. Other employees. [See DIA] 2. Students. [See FFH; see FFG regarding child abuse and neglect.] While acting in the course of employment, an employee shall not engage in prohibited harassment, including sexual harassment, of other persons, including Board members, vendors, contractors, volunteers, or parents. An employee shall report child abuse or neglect as required by law. [See FFG]
Relationships with Students	An employee shall not form romantic or other inappropriate social relationships with students. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. As required by law, the District shall notify the parent of a student with whom a District employee or person acting as a service provider for the District is alleged to have engaged in certain misconduct. [See FFF for parent notification requirements and DHB and DHC for reporting requirements.]

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**Tobacco and
Nicotine Products
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 if the employee is convicted for a violation of a criminal drug statute occurring in the workplace in accordance with Arrests, Indictments, Convictions, and Other Adjudications, below.

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

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3. Possesses a controlled substance or drug that a licensed physician has prescribed for the employee's child or other individual for whom the employee is a legal guardian.

Sanctions

An employee who violates these drug-free workplace provisions shall be subject to disciplinary sanctions. Sanctions may include:

1. Referral to drug and alcohol counseling or rehabilitation programs;
2. Referral to employee assistance programs;
3. Termination from employment with the District; and
4. Referral to appropriate law enforcement officials for prosecution.

Notice

Employees shall receive a copy of this policy.

**Arrests, Indictments,
Convictions, and
Other Adjudications**

An employee shall notify his or her principal or immediate supervisor within three calendar days of any arrest, indictment, conviction, no contest or guilty plea, or other adjudication of the employee for any felony, any offense involving moral turpitude, and any of the other offenses as indicated below:

1. Crimes involving school property or funds;
2. Crimes involving attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
3. Crimes that occur wholly or in part on school property or at a school-sponsored activity; or
4. Crimes involving moral turpitude, which include:
 - Dishonesty; fraud; deceit; theft; misrepresentation;
 - Deliberate violence;
 - Base, vile, or depraved acts that are intended to arouse or gratify the sexual desire of the actor;
 - Felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in Chapter 481 of the Health and Safety Code;
 - Felony driving while intoxicated (DWI); or
 - Acts constituting abuse or neglect under the Texas Family Code.

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Dress and Grooming An employee's dress and grooming shall be clean, neat, in a manner appropriate for his or her assignment, and in accordance with any additional standards established by his or her supervisor and approved by the Superintendent.

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**Employee Free
Speech**

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

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

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

**Whistleblower
Protection**

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

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

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

Gov’t Code 554.002

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

Definitions

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

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

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

1. The employee believed that the conduct reported was a violation of law; and

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2. The employee's belief was reasonable in light of the employee's training and experience.

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

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

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

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

**Whistleblower
Complaints**

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

Initiate Grievance

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

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

Legal Action

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

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

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

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Burden of Proof	If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.
Affirmative Defense	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. <i>Gov't Code 554.004</i>
Notice of Rights	A board shall inform its employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. <i>Gov't Code 554.009</i>
Right to Report a Crime	A district employee may report a crime witnessed at the school to any peace officer with authority to investigate the crime. A district may not adopt a policy requiring a school employee to refrain from reporting a crime witnessed at the school or to report a crime witnessed at the school only to certain persons or peace officers. <i>Education Code 37.148</i>
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.

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

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

Family Code 261.110(a)-(c), (l)

**Protection from
Disciplinary
Proceedings**

For purposes of the following provisions, "disciplinary proceeding" means discharge or suspension of a professional employee, or termination or nonrenewal of a professional employee's term contract. [See DGC regarding immunity] *Education Code 22.0512(b)*

Reporting Child
Abuse or
Maltreatment

A district employee may not be subject to any disciplinary proceeding resulting from an action taken in compliance with Education Code 38.0041 [prevention of child abuse and other maltreatment, see FFG]. *Education Code 38.0041(g)*

Use of Physical
Force

A professional employee may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Penal Code 9.62. This provision does not prohibit a district from enforcing a policy relating to corporal punishment or bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment. *Education Code 22.0512(a); Tex. 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].

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

Education Code 28.0027(b), (c)

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-

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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 non-salaried 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.

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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:

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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