



## **Districts of Innovation**

### **What is a “District of Innovation”?**

The District of Innovation concept was passed into law by the 84th Legislative Session in House Bill 1842, which created Texas Education Code chapter 12A.

The law allows traditional independent school districts to access most of the flexibilities available to Texas’ open enrollment charter schools. To access these flexibilities, a school district must adopt an innovation plan, as set forth in Chapter 12A.

### **What school districts are eligible to be Districts of Innovation?**

To be eligible for designation as a District of Innovation, a school district’s most recent academic performance rating must be at least acceptable.

### **Why would a school district choose to pursue this option?**

A local school district may want to pursue specific innovations in curriculum, instruction, governance, parent or community involvement, school calendar, budgeting, or other ideas. An innovation plan also allows a school district to gain exemption from many Texas Education Code requirements.

Essentially, innovation plans will be about local control. Each district will pursue designation as a District of Innovation for different reasons, and no two plans may look the same. Community members should note that each innovation plan will be unique to the local school district. The experiences of other school districts may be informative, but may not directly relate to the purpose or progress of a plan in another location.

### **What legal requirements could a school district avoid by becoming a District of Innovation?**

A District of Innovation may adopt a plan that includes exemptions from most of the same state laws that are not applicable to open enrollment charter schools. These laws could include:

- Site-based decision making processes (to the extent required by state law)
- Uniform school start date
- Minimum minutes of instruction
- Class size ratio

- The 90 percent attendance rule (but compulsory attendance still applies)
- Student discipline provisions (with some key exceptions, like the requirement to have a code of conduct and restrictions on restraint and seclusion)
- Teacher certification (except as required by federal law)
- Teacher contracts
- Teacher benefits, including state minimum salary schedule, duty-free lunch, and planning periods
- Teacher appraisal system

**What legal requirements will continue to apply to all school districts, including Districts of Innovation?**

An innovation plan cannot seek exemption from a state or federal requirement applicable to open enrollment charter schools, certain parts of Chapter 11, state requirements for curriculum and graduation, and academic and financial accountability. Laws from which a District of Innovation cannot be exempt include statutes regarding:

- Elected boards of trustees
- Powers and duties of school boards, superintendents, and principals
- PEIMS
- Criminal history record checks and educator misconduct reporting
- Curriculum and graduation requirements
- Bilingual education
- Special education
- Prekindergarten
- Academic accountability, including student assessments
- Financial accountability and related reporting
- Open meetings
- Public records
- Public purchasing under the Texas Local Government Code and conflicts of interest
- Nepotism
- Other state and federal laws outside of the Texas Education Code

The Texas Education Agency (TEA) has proposed rules, described below, that include a detailed list of the statutes from which a District of Innovation cannot claim an exemption.

**Will innovation plans have to be approved by the Texas Education Agency?**

No, but TEA has rulemaking authority regarding the implementation of Districts of Innovation. Proposed rules were posted online on April 1, 2016, and TEA scheduled a public hearing regarding the proposed rules on April 25, 2016. As described in more detail in the proposed rules, a district that has proposed an innovation plan is required to notify TEA, and TEA is required to maintain information about the statutory exemptions adopted by districts in their innovation plans. TEA must then report to the Legislature about school districts' statutory exemptions.

Although the rules are not yet final, many districts are working with school attorneys to follow the required statutory procedure to establish innovation plans. The proposed rules include a Figure, which is an itemized list of possible exemptions. The proposed rules state clearly that the Figure is not intended to be a complete list of the possible exemptions. Rather, the Figure is provided for ease of reporting, and it is neither a guarantee nor a limitation on the possible statutory exemptions. Around the state, districts are considering innovation plans that either: include exemptions from provisions not listed on the Figure; or describe statutory exceptions more narrowly than the items are listed in the Figure. Any school district considering the adoption of an innovation plan should work closely with its school attorney as it drafts the list of exemptions in its innovation plan.

**What impact could innovations have on school funding?**

School district funding will remain substantially the same for Districts of Innovation. Unlike innovation zones in other states, this statutory option in Texas was not created to provide additional grant funding to participating districts. Depending on a district's innovation plan, the district may have some flexibility in the use of compensatory education funds. Districts are encouraged to think about how their flexibility choices, especially with respect to the school calendar and attendance, could impact funding calculations.

**What impact could innovations have on school personnel?**

Possibly none. But depending on the choices a district includes in its local innovation plan, an innovation plan could provide for substantial changes to key employment policies related to employment contracts and benefits of employment. Districts of Innovation transitioning to plans that include changes to employment practices will need to work with their school attorneys to honor existing contracts.

**Can a District of Innovation be created to respond to needs or opportunities at a particular subset of campuses?**

Chapter 12A does not specifically permit or prohibit adopting an innovation plan that proposes innovations at only a subset of district campuses. In other states, however, innovation zones have started at a small number of campuses (like a single feeder pattern) before expanding to other campuses. In the alternative, a district may consider the option of a campus conversion charter for a single campus or group of campuses. Tex. Educ. Code § 12.0522.

**What process is required to adopt an innovation plan?**

The process is initiated by either:

- a resolution of the board of trustees; or
- a petition signed by a majority of the members of the district-level advisory committee.

Promptly after the resolution or petition, the board must hold a public hearing to consider whether the district should develop an innovation plan. Under TEA's proposed rules, a board must hold the public hearing as soon as possible, but no later than the next scheduled board of trustees meeting, to consider whether the district should develop a local innovation plan. The board's resolution may outline the parameters around which the innovation committee may develop the plan.

At the conclusion of the hearing or soon thereafter, the board may:

- decline to pursue the designation as a District of Innovation; or
- appoint a committee to develop a plan.

The membership of the committee is not specified in statute, but as a practical matter, the members of the committee must be able to write a comprehensive plan with the elements specified below, clearly articulate the purpose of the plan, and persuade the school community of the value of the plan.

The plan must:

- provide for a comprehensive educational program for the district which may include innovations in curriculum, instructional methods, community and parent involvement, campus governance, modifications to the school day or year, budgeting and sustainable funding, local accountability, and other innovations prescribed by the board; and
- identify the Texas Education Code provisions from which the District of Innovation should be exempted, within the parameters described above.

The board cannot approve the plan until the final plan has been posted online for 30 days, the commissioner has been notified, the district-level advisory committee (DAC) has held a public meeting to consider the final plan, and the DAC has approved the plan by a majority vote. The public hearing and vote of the DAC may occur at the same meeting.

The board of trustees may then vote to approve the plan. The vote must pass by a two-thirds majority vote. The district may then function in accordance with the plan and be exempt from the specified Texas Education Code mandates.

Districts are encouraged to use an abundance of caution throughout the adoption process to adhere to Chapter 12A, TEA rules, and state laws regarding open meetings and open records. Questions will inevitably arise about the application of the Texas Open Meetings Act to committee meetings and meetings of the DAC. School districts should consult their school attorneys regularly and keep the process as transparent as possible to avoid legal challenges that could delay the implementation of an innovation plan.

### **How long does an innovation plan stay in effect?**

The plan may have a term of up to five years, and it may be amended, rescinded, or renewed by a majority vote of the DAC or a comparable committee if the District of Innovation is exempt from having a DAC, and the board of trustees in the same manner required for initial adoption. Districts may want to review the plan more frequently, perhaps on the biennium to consider new legislation.

TEA's proposed rules indicate that a district may have only one innovation plan at a time. A district innovation plan may be amended, rescinded, or renewed. An amendment to an approved plan does not change the date of the term of designation as a District of Innovation, and exemptions that were already formally approved need not be reviewed. The proposed rules limit renewal of a plan to the period within six months of the expiration of the plan's term. During renewal, all sections of the plan and exemptions must be reviewed, and the original statutory adoption process must be followed.

If a District of Innovation receives unacceptable academic and/or financial performance ratings for two consecutive years, the commissioner may terminate the innovation plan or require the district to amend its plan. If a District of Innovation receives unacceptable academic and/or financial performance ratings for three consecutive years, the commissioner must terminate the innovation plan. Upon termination of an innovation plan, a district must return to compliance with all specified areas of the Texas Education Code by a date to be determined by the commissioner.

### **What impact could designation as a District of Innovation have on district policy?**

A District of Innovation will likely need to make changes to LOCAL policies and may need adjustments to LEGAL policies to reflect that some legal provisions may be affected by the district's innovation plan. After TEA publishes rules and the list of legal provisions from

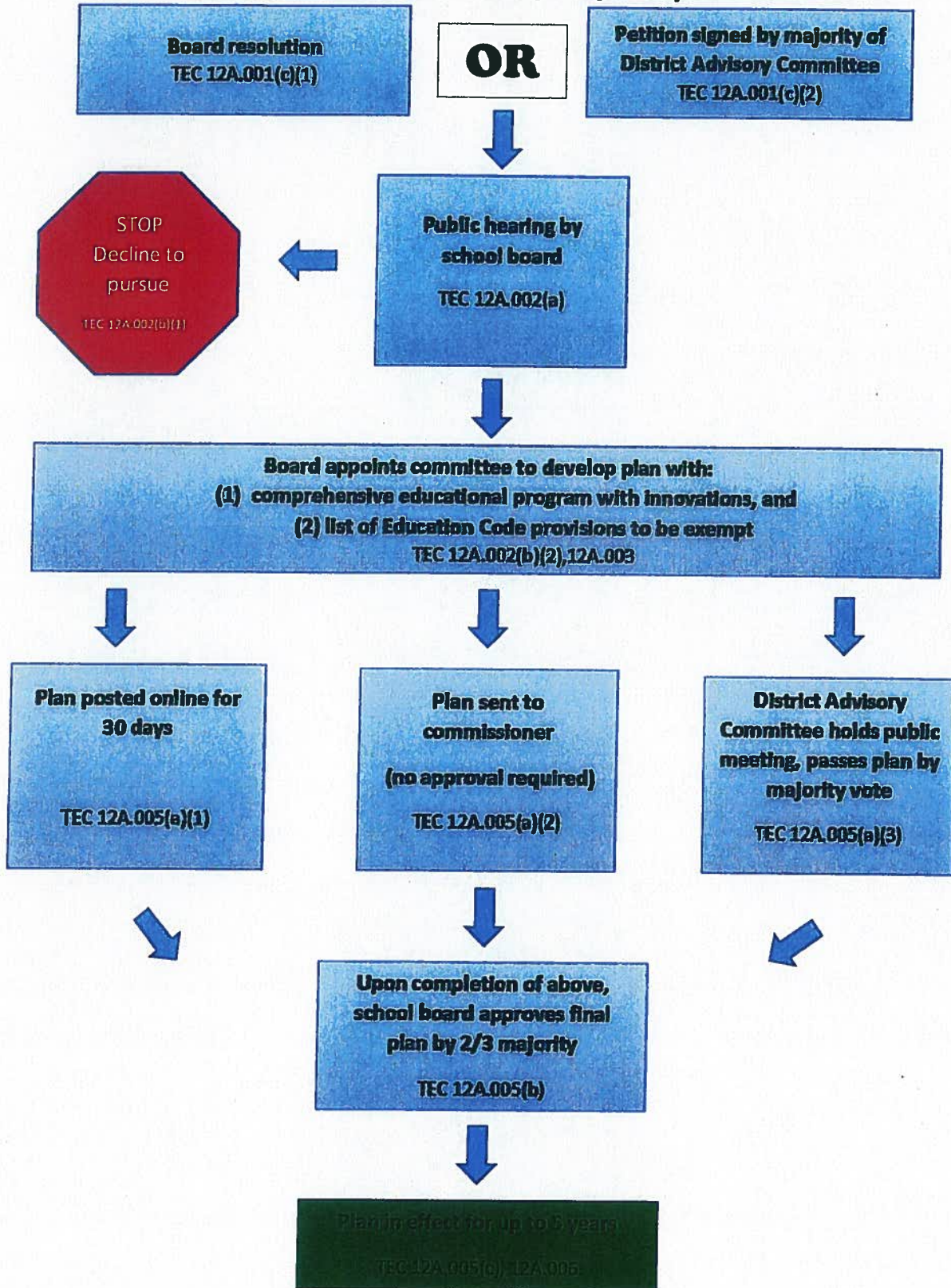
which a District of Innovation may seek an exemption, TASB Policy Service will be able to help each District of Innovation evaluate necessary changes to the district's policy manual, which could vary greatly from district to district, depending on the extent of the district-wide exemptions included in the innovation plan.

For more information on this and other school law topics,  
visit TASB School Law eSource online at [schoolawesource.tasb.org](http://schoolawesource.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.*

*Updated April 2016*

# Process to Become a District of Innovation Texas Education Code (TEC) Chapter 12A









## Final TEA Rules on Districts of Innovation

On September 9, 2016, the Texas Education Agency published revisions to its proposed rules on Districts of Innovation (originally published on April 1, 2016). The [Adopted Rules at 19 TAC Chapter 102, Subchapter JJ](#) as revised are effective as of September 13, 2016. The Rules include Figure: 19 TAC 102.1307(d) with a non-exhaustive list of exemptions.

The following is a summary of highlights to changes between the April and September versions of the rules:

- The new rules make adjustments to references to the district-level advisory committee (DAC) to clarify that: the DAC can be the committee that serves to write the innovation plan; and, through its innovation plan, a District of Innovation (DOI) may do away with the DAC and substitute a different committee to serve in an advisory role.
- Instead of being required to hold a public hearing at the “next” board meeting following adoption of a resolution or receipt of a petition, a board must hold a public hearing within 30 days.
- A school board may set parameters for the scope of the innovation plan at any time (not just at the time of the initial resolution).
- Texas Education Code chapter 22 subchapter B on civil immunity has been added to the list of Education Code sections that cannot be exempted through an innovation plan.
- A district with a preliminary accountability rating that is not acceptable will not be able to approve an innovation plan.
- Language prohibiting seeking an exemption from requirements imposed by a grant or state program in which a district voluntarily participates was clarified, and a broad statement suggesting that the commissioner could add to the list of prohibited exceptions was deleted.
- A limitation on renewal to the six months preceding the expiration of an innovation plan was eliminated.
- In the Figure, which is the means by which districts will report their exemptions to TEA, the Agency changed some text to more closely reflect the statute; added a place to indicate whether exemptions apply district-wide, by campus, or “other;” and expanded in more detail the list of code sections from which a district can seek exemption.

The revised rules will be a helpful guide to districts working through the DOI process. See TEA’s [Districts of Innovation page](#) and TASB’s [Districts of Innovation page](#) for more information and resources.

For more information on this and other school law topics,  
visit TASB School Law eSource online at [schoolawesource.tasb.org](http://schoolawesource.tasb.org).

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**HB 1842 Districts of Innovation - Raise Your Hand Texas**  
**Information meeting 1/23/16 - Austin Texas**

David Anthony - RYHT  
Mark Baxter - TEA  
Joy Baskin - TASB Legal Services

R11 Districts in attendance:

HBB  
Denton  
Keller  
Keene  
Crowley  
Godley

1. Opportunity to explore the exemptions that charters have and identify the obstacles in statute that are keeping you from doing what you think you want to do to better serve kids.
2. You don't have to pick every fight. This is a customizable piece of legislation.
3. Can be all provisions or just one
4. Can be all district or just a campus (even a low performing campus)

**\*\*RYHT is encouraging districts to engage in this process so that the legislature doesn't repeal the process in the next session.**

**Rules have not been published yet.**

Mark Baxter

2 parts - The process you have to go through (stated in statute but simplified)  
AND the list of exemptions - put out in an iterative fashion.

Starting out with a "meat and potatoes" list - the stuff TEA hears about all the time - school start date, class size, etc.

Additional items added as they determine legalities.

TASB will collect a list of resources on their website. They gave out a process flow-chart (Shared in this folder). Hoping to collect information on districts engaged in the process to develop a contact list for those who are interested.

TASB also providing policy support service.

## AGENDA

### 1. **Introductions** - How to start a discussion about Innovation Zones in the community.

Smaller schools could start the conversation at the coffee shop, etc.

Larger schools need to be strategic as they approach the community.

Thinking about framing the intention for pursuing the exemptions as efforts to improve student experience.

### 2. **Planning** - decisions to pursue District of Innovation exemption, SB2 charters or both

(Districts can choose... either-or, OR, Both)

If you choose the SB2 ("charterizing" a campus or a feeder pattern) you can't pick provisions... you have to go all the way.

Mark Baxter mentioned that plans impacting length of school day should consider pending changes to the SAAH -

Language in the handbook that changes the policy requiring full day to be 7 hrs.

Most important decision is who is on the Drafting committee... they need to be able to sell the plan to the community or board. Recommend a board member be on the committee.

### 3. **Preliminary Board Issues**

Passing a resolution

Naming a drafting committee - **recommendations** from those already engaged in the process

21 recommended as size by El Paso - San Antonio indicated well over 40

Involve a member from IHE if possible

Supt names a certain number of members

Advising the drafting committee/limiting issues

The board can limit the scope of issues to be addressed by the committee so that the committee doesn't bring issues back to the board for approval that can't be supported.

Develop cycles of committee involvement and timelines if planning to address multiple issues over several years.

#### Open Meetings/Community

Be as transparent as possible to gain trust and build support

Open meetings act isn't necessarily required.

B/c the final plan is subject to board approval. The committee is merely presenting a plan for approval.

Err on the side of caution to avoid potential delays with court interference or bad PR...if someone presents that "something is going on in those meetings" a judge could cause a delay.

Something to consider...post it as a potential board meeting and a meeting of the district advisory committee just in case you have a quorum of board members.

#### Commissioner Notification

Letter head with board pres and supt signature. Email. Hard copy mailed.

TEA will set up an online tool to report the statutes districts are exempting themselves from.

#### SB2 Charters

Charter drafting - not much public school experience with creating an in district charter

Need to consider the term and provision for revocation

Who is the board? Need to carefully consider. Who is the private non-profit...how do those people get on that board? All things to be very careful about.

**4. Specific Exemption and Substitute Local Policies - ONLY in the education code..not gov code, or other codes - This list is just the list that RYHT discussed during the meeting (not an exhaustive list)**

School Start date

22/1 - Class size

WACO considering increasing class size at higher performing campuses so as to redirect teachers to higher need campus

Need build into your educational plan some assurance to the campuses that will have higher class size

Mark Baxter suggested looking at combinations of exemptions such as class size, duty free lunch, planning periods, etc.

You have to be careful that you're not trying to rewrite the legislation...I can exempt myself from 22/1 but need a local policy to define my limit.

Teacher contract/non renewal

Important to consider that you don't have to exempt from all of chp 21. You can exempt from a single subsection if that is what you've identified as the issue that is holding you back. David gave the example of simply extending the number of years you have a probationary contract.

Might also consider the tail-end of the nonrenewal process - you always have to consider constitutional viability.

State Leave Requirements - not give TDL (temporary disability leave) as an example

Salary Schedules

Certification requirements - local charters might be a good idea here to exempt from those requirements.

District could as part of the innovation plan exempt the entire district from certification requirements but locally require certifications for all minus a specific group, i.e. dual credit (keeps IHE from having to get alt cert).

Does not include bilingual or sped including certification reqs.

Chapter 37/Discipline - don't forget constitutional issues

Charters still have to have a code of conduct, among a couple of other

You could exempt the teacher removal provision

Purchasing/Ch44

David Anthony - recommends not tackling this one at least in year 1.

**\*\*You can't just say I'm going to do what is in chapter 12 for charters...you don't get to be a charter. You get to exempt yourself from certain things.**

Other things that were asked about:

TRS - no

Cameras in the classroom - no

Nothing from chapter 39

Instead of exempting from campus accountability (you can't do) have discussion with TEA about changing the definition of campus.

(potentially...Mark really didn't have an answer on that one)

Can you change campus numbers to aggregate multiple campuses under 1 number and averaging their scores for 1 accountability rating.

Can you opt out of a TEA rule written about a statute? Mark not sure. David said that if questioning the rule, you're not really looking at exemption and should take the rulemaking to district court instead of using the innovation zone process.

## **5. Board Options**

What if the board doesn't agree with part of the plan?

The plan would go back to the committee and be reposted for another 30 days review.

Amendment

The assumption is that in year 1 we've picked low hanging fruit and ultimately we're convinced it is a 5 year plan.

Restart the process versus multiple plans

Need to consider the scope of the proposed amendment/term of an amendment

In year 2, do you create a brand new plan... or just amend the original and if an amendment, you have to consider is the amendment also good for 5 years.

Are you going to reauthorize everything every time you approve a new part of the plan?

Are you going to keep up with some sort of rolling renewal for individual components.

**6. Timing/Effective dates/Cycle of Review**

Just need to carefully consider start dates from some of the provisions that you're exempting yourself from. Think through all of the ramifications of the change.

**7. Spring Branch ISD - Innovation Zone plan:**

<https://www.springbranchisd.com/innovation/>

**KEY CONSIDERATIONS:**



# ***District of Innovation Exemptions*** 10/19/2016

## **Chapter 11 – School Districts**

### **Subchapter D. Powers and Duties of Board of Trustees of Independent School Districts**

0 §11.1511 (b)(5), (14) Specific Powers and Duties of Board

1 §11.162 School Uniforms

### **Subchapter F. District-Level and Site Based Decision-Making**

0 §11.251 Planning and Decision-Making Process

0 §11.252 District-Level Planning and Decision-Making

0 §11.253 Campus Planning and Site-Based Decision-Making

0 §11.255 Dropout Prevention Review

## **Chapter 21 – Educators**

### **Subchapter A – General Provisions**

1 §21.002 Teacher Employment Contracts

21 §21.003 Certification Required

6 DK Legal

0 §21.0031 Failure to Obtain Certification; Contract Void

### **Subchapter B – Certification of Educators**

6 *§21.044 Rules Regarding Educator Preparation - Dyslexia*

0 §21.051 Rules Regarding Field-Based Experience and Options for Field Experience and Internships.

4 §21.053 Presentation and Recording of Certificates

4 *§21.055 Rules Regarding School District Teaching Permits*

5 §21.057 Parental Notification

### **Subchapter C – Probationary Contracts**

3 *§21.102 Rules Regarding Probationary Contracts*

### **Subchapter D – Continuing Contracts**

### **Subchapter E – Term Contracts**

3 *§21.203 Rules Regarding Non Renewal of Term Contracts*

### **Subchapter H – Appraisals and Incentives**

12 §21.352 Local Role

1 §21.353 Appraisal on Basis of Classroom Teaching Performance

2 §21.354 Appraisal of Certain Administrators

2 §21.3541 Appraisal and Professional Development System for Principals



## **Subchapter I – Duties and Benefits**

- 2 §21.401 Minimum Service Required
- §21.402 Minimum Salary Schedule for Certain Professional Staff
- §21.4021 Furloughs
- §21.4022 Required Process for Development of Furlough Program or Other Salary Reduction Proposal
- §21.403 Placement on Minimum Salary Schedule
- §21.4031 Professional Staff Service Records
- §21.4032 Reductions in Salaries of Classroom Teachers and Administrators
- 4 §21.404 Planning and Preparation Time
- §21.405 Duty-Free Lunch
- §21.406 Denial of Compensation Based On Absence for Religious Observance Prohibited
- §21.407 Requiring or Coercing Teachers to Join Groups, Clubs, Committees, or Organizations: Political Affairs
- §21.408 Right To Join or Not To Join Professional Association
- §21.409 Leave Of Absence for Temporary Disability
- §21.415 Employment Contracts

## **Subchapter J – Staff Development**

- 2 §21.451 Staff Development Requirements
- §21.452 Developmental Leaves of Absence
- 1 §21.458 Mentors

## **Chapter 22 – School District Employees and Volunteers**

### **Subchapter A – Rights, Duties, and Benefits**

- §22.001 Salary Deductions for Professional Dues
- §22.002 Assignment, Transfer, or Pledge of Compensation
- §22.003 Minimum Personal Leave Program
- §22.006 Discrimination Based on Jury Service Prohibited
- §22.007 Incentives for Early Retirement
- §22.011 Requiring or Coercing Employees to Make Charitable Contributions

## **Chapter 25 – Admission, Transfer, and Attendance**

### **Subchapter C – Operation of Schools and School Attendance**

- 8 §25.081 *Rules Regarding Minutes of Instruction*
- 30 §25.0811 First Day of Instruction
- 7 §25.0812 Last Day of School
- 7 §25.082 *Rules Regarding School Pledges and Minute of Silence*
- 2 §25.083 School Day Interruptions
- 1 §25.084 *Rules Regarding Year - Round School Systems*
- 7 §25.092 Minimum Attendance for Class Credit or Final Grade



## **Subchapter D – Student/Teacher Ratios; Class Size**

- 10 §25.111 Student/Teacher Ratios
- 16 §25.112 Class Size
- 12 §25.113 Notice of Class Size
- 2 §25.114 Student/Teacher Ratios in Physical Education Classes; Class Size

## **Chapter 37 – Discipline; Law and Order**

### **Subchapter A – Alternative Setting for Behavior Management**

- 4 §37.0012 Designation of Campus Behavior Coordinator
- §37.002 Removal by Teacher

## **Chapter 44 –Fiscal Management**

### **Subchapter B – Purchases; Contracts**

- §44.031 Purchasing Contracts
- §44.0331 Management Fees Under Certain Cooperative Purchasing Contracts
- §44.0352 Competitive Sealed Proposals
- §44.042 Preference to Texas and United States Products
- §44.043 Right To Work
- §44.047 Purchase or Lease of Automated External Defibrillator

### **Subchapter Z – Miscellaneous Provisions**

- §44.901 Energy Savings Performance Contracts
- §44.902 Long-Range Energy Plan to Reduce Consumption of Electric Energy
- §44.903 Energy-Efficient Light Bulbs in Instructional Facilities
- §44.908 Expenditure of Local Funds

## **Chapter 45 – School District Funds**

### **Subchapter G – School District Depositories**

- §45.205 Term of Contract
- §45.206 Bid Or Request for Proposal Notices; Bid and Proposal Forms
- §45.207 Award of Contract
- §45.208 Depository Contract; Bond
- §45.209 Investment of District Funds