



Policy Reference Manual

Update 92

TASB Policy Reference Manual Update 92 includes substantial revisions to legally referenced material addressing reduction in force (RIF) and incorporates provisions on several cost reduction options from Senate Bill 8 (First Called Session, 82nd Legislative Session), such as salary reductions and furloughs. At this update, we have also reorganized the provisions on compensation and benefits.

To maintain your *Policy Reference Manual* as an up-to-date resource on governance and management of public school districts throughout Texas, please incorporate Update 92 into the manual as soon as possible. Remember that the *Policy Reference Manual* is a comprehensive collection of federal and state statutes and regulations, case law, attorney general opinions, and commissioner's decisions affecting Texas school districts. As such, it is an excellent reference document that recites a broad array of legal requirements, many of which apply to all districts, others to only a certain few. For this reason, these (LEGAL) policies are not suitable for incorporation in localized policy manuals.

PLEASE NOTE: This Update 92 packet may not be considered as legal advice and is not intended as a substitute for the advice of a district's legal counsel.

If you have any questions concerning this update or the *TASB Policy Reference Manual*, please call 800-580-7529 or 512-467-0222.

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Instruction Sheet

TASB Policy Reference Manual Update 92

District Policy Reference Manual

Code	Action To Be Taken	Note
D (LEGAL)	Replace table of contents	Revised table of contents
DEA (LEGAL)	Replace policy	Revised policy
DEAB (LEGAL)	ADD policy	See explanatory note
DFF (LEGAL)	ADD policy	See explanatory note

Explanatory Notes

TASB Policy Reference Manual Update 92

District: Policy Reference Manual
D (LEGAL) PERSONNEL

The D section table of contents has been revised to reflect the renaming of policy code DEA, now titled Wage and Hour Laws, and the addition of DEAB, Salaries and Wages. Three other new codes have been added in the DFF series to accommodate local reduction in force policies.

DEA (LEGAL) COMPENSATION AND BENEFITS
WAGE AND HOUR LAWS

Update 92 includes reorganization of the DEA policy series addressing compensation and benefits. Content on the Fair Labor Standards Act will remain at DEA. General content on salaries and wages has been moved to DEAB, Salaries and Wages.

The reorganization also resulted in the following changes to this policy:

- Deletion of several expired or repealed provisions, including provisions addressing salaries for the 2009–10 and 2010–11 school years.
- Deletion of provisions on the allotment of funds for support staff health-care supplements, since this one-time pay mandate, which is still in law, has been incorporated into pay practices.
- Revision of the margin note addressing breaks for employees to express breast milk to BREAKS FOR NURSING MOTHERS to better reflect the statutory provisions.
- Addition of an existing statutory provision on the PAYDAY LAW EXEMPTION for school districts. See page 5.

DEAB (LEGAL) COMPENSATION AND BENEFITS
SALARIES AND WAGES

DEAB includes several provisions moved from DEA without revision: minimum salary schedule, employees formerly on career ladder, pay increases, designation of compensation for benefits, TRS contributions and surcharges, and the earned income tax credit.

On page 4, new material has been added from a 2009 commissioner of education decision addressing a district's authority for DECREASING PAY of an educator. A reduction is permissible if the district gives formal and specific warning to the educator of the salary reduction when the educator still has the opportunity to unilaterally resign from his or her contract.

New provisions have also been added from SB 8 (First Called Session, 82nd Legislative Session) addressing salary reductions and furloughs. When a district implements WIDESPREAD SALARY REDUCTIONS for teachers based on district financial conditions, the district must also reduce the salaries of administrators or other professional employees in a proportionate amount.

Districts also now have the option of implementing a FURLOUGH PROGRAM in accordance with the statutory requirements and district policy. The district may reduce the number of days of service required by up to six days if the commissioner certifies that the district will receive less state and local funding for the year than was provided to the district during the 2010–11 school year. The commissioner must certify a decrease in FUNDING LEVELS by July 1 of each year. A board's decision to implement a furlough is not subject to appeal.

Explanatory Notes

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For either a widespread reduction in salaries or a furlough, the district must also follow a specific process outlined in statute to implement the programs. The SALARY REDUCTION/FURLOUGH PROCESS requires the district to include the involvement of the district's professional staff in development of the program and to give district employees an opportunity to comment at a public meeting. At the PUBLIC MEETING, the district must provide information about:

- The options the district considered for managing the district's financial resources,
- How the program will limit the number of staff who will lose their jobs, and
- The district's local option of providing a residence homestead exemption.

DFF (LEGAL) TERMINATION OF EMPLOYMENT REDUCTION IN FORCE

This new legally referenced policy on reduction in force (RIF) includes existing commissioner of education decisions and statutory provisions, as well as new provisions from SB 8:

- The commissioner's decision in *Stidham v. Anahuac Independent School District* explains that the general BOARD AUTHORITY to govern the district includes making responsible choices in managing the finances and personnel of the district. *Wasserman v. Nederland Independent School District*, another commissioner's decision, clarifies that a district is free to change its organizational structure to increase efficiency.
- The commissioner's decision in *Amerson v. Houston Independent School District* outlines when an employee whose position was eliminated due to a RIF must be given CONSIDERATION FOR OPEN POSITIONS.
- Specific provisions on each type of contract describe when and under what circumstances an employee may be discharged and the board's options for the type of hearing to provide if requested by the employee.
- Repeated from CEA(LEGAL) is the requirement for a board to adopt a resolution declaring a FINANCIAL EXIGENCY. Also at this margin note is a provision explaining that the board can decide whether to use the independent hearing examiner process for terminations based on financial exigency.
- A provision from the federal WARN ACT clarifies that a school district is not subject to the Act's notice requirements for mass layoffs.

Please Note: This manual does not have policies in all codes. The coding structure is common to all TASB manuals and is designed to accommodate expansion of both (LEGAL) and (LOCAL) policy topics and administrative regulations.

SECTION D: PERSONNEL

DA	EMPLOYMENT OBJECTIVES
DAA	Equal Employment Opportunity
DAB	Objective Criteria for Personnel Decisions
DB	EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
DBA	Credentials and Records
DBAA	Criminal History and Credit Reports
DBB	Medical Examinations and Communicable Diseases
DBD	Conflict of Interest
DBE	Nepotism
DC	EMPLOYMENT PRACTICES
DCA	Probationary Contracts
DCB	Term Contracts
DCC	Continuing Contracts
DCD	At-Will Employment
DCE	Other Types of Contracts
DE	COMPENSATION AND BENEFITS
DEA	Salaries Wage and Wages Hour Laws
DEAA	Incentives and Stipends
DEAB	Salaries and Wages
DEB	Fringe Benefits
DEC	Leaves and Absences
DECA	Family and Medical Leave
DECB	Military Leave
DED	Vacations and Holidays
DEE	Expense Reimbursement
DEG	Retirement
DF	TERMINATION OF EMPLOYMENT
DFA	Probationary Contracts
DFAA	Suspension/Termination During Contract
DFAB	Termination at End of Year
DFAC	Return To Probationary Status
DFB	Term Contracts
DFBA	Suspension/Termination During Contract
DFBB	Nonrenewal
DFC	Continuing Contracts
DFCA	Suspension/Termination
DFD	Hearings Before Hearing Examiner
DFE	Resignation
DFF	Reduction in Force
DFFA	Financial Exigency

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SECTION D: PERSONNEL

DFFB
DFFC

Program Change
Continuing Contracts

DG	EMPLOYEE RIGHTS AND PRIVILEGES
DGA	Freedom of Association
DGB	Personnel-Management Relations
DGBA	Employee Complaints/Grievances
DGC	Immunity
DH	EMPLOYEE STANDARDS OF CONDUCT
DHA	Gifts and Solicitations
DHE	Searches and Alcohol/Drug Testing
DI	EMPLOYEE WELFARE
DIA	Freedom from Discrimination, Harassment, and Retaliation
DJ	EMPLOYEE RECOGNITION AND AWARDS
DK	ASSIGNMENT AND SCHEDULES
DL	WORK LOAD
DLA	Staff Meetings
DLB	Required Plans and Reports
DM	PROFESSIONAL DEVELOPMENT
DMA	Required Staff Development
DMB	Career Advancement
DMC	Continuing Professional Education
DMD	Professional Meetings and Visitations
DME	Research and Publication
DN	PERFORMANCE APPRAISAL
DNA	Evaluation of Teachers
DNB	Evaluation of Other Professional Employees
DP	PERSONNEL POSITIONS
DPB	Substitute, Temporary, and Part-Time Positions

MINIMUM SALARY SCHEDULE — EDUCATORS	<p>A district shall pay each classroom teacher, full-time librarian, full-time 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.</p>
DEFINITIONS	
'CLASSROOM TEACHER'	<p>"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 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.</p>
'LIBRARIAN'	<p>"Librarian" means an educator who provides full-time library services and holds the relevant certificate from SBEC.</p>
'COUNSELOR'	<p>"Counselor" means an educator who provides full-time counseling and guidance services and holds the relevant certificate from SBEC.</p>
'NURSE'	<p>"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.</p>
'FULL-TIME'	<p>"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.</p> <p><i>19 TAC 153.1022(a)</i></p>
PLACEMENT ON SALARY SCHEDULE	<p>The Commissioner's rules determine the experience for which a teacher, librarian, counselor, or nurse is to be given credit in placing the teacher, librarian, counselor, or nurse on the minimum salary schedule. A district shall credit the teacher, librarian, counselor, or nurse for each year of experience, whether or not the years are consecutive. <i>Education Code 21.402(a), 21.403(c); 19 TAC 153.1022</i></p>
SALARIES FOR 2009-10 AND 2010-11	<p>For the 2009-10 and 2010-11 school years, a district shall increase the monthly salary of each classroom teacher, full-time speech pathologist, full-time librarian, full-time counselor, and full-time school nurse by the greater of:</p>

~~1. — \$80; or~~

~~2. — The maximum uniform amount that, when combined with any resulting increases in the amount of contributions made by the district for social security coverage for the specified employees or by the district on behalf of the specified employees under Government Code 825.405 (TRS retirement fund contributions), may be provided using an amount equal to the product of \$60 multiplied by the number of students in weighted average daily attendance in the school during the 2009–10 school year.~~

~~The increase in salary does not include:~~

~~1. — Any amount an employee would have received for the 2009–10 or 2010–11 school year, as applicable, under the district's salary schedule for the 2008–09 school year, if that schedule had been in effect for the 2009–10 or 2010–11 school year, including any local supplement and any money representing a career ladder supplement the employee would have received in the 2009–10 or 2010–11 school year; or~~

~~2. — Any part of the salary to which an employee is entitled under the state minimum salary schedule.~~

~~These provisions expire September 1, 2011.~~

~~Education Code 19.009(d-2), (d-3), 21.402(c-1)–(c-3)~~

~~A classroom teacher, full-time speech pathologist, full-time librarian, full-time counselor, or full-time school nurse employed by a district in the 2010–11 school year is entitled to a salary that is at least equal to the salary the employee received for the 2010–11 school year, for as long as the employee is employed by the same district. Education Code 21.402(d)~~

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), 21.403(d)~~

HEALTH CARE
SUPPLEMENT FOR
SUPPORT STAFF

~~Each year, TEA shall distribute staff salary allotment funds to districts for the purpose of making payments of health care supplementation to eligible employees.~~

~~To be eligible, the employee must be a participating member of TRS, must not be a TRS retiree, and must have provided a written election of whether to designate a portion of the individual's compensation to be used as health care supplementation. An administrator, a classroom teacher, a full-time librarian, a full-time counselor, or a full-time nurse subject to the minimum salary schedule under Education Code 21.402 is not eligible for health care supplementation.~~

~~The amount of health care supplementation shall be:~~

- ~~1. \$500, for full-time employees.~~
- ~~2. \$250, for part-time employees.~~

~~Such payment is in addition to wages a district would otherwise pay the employee during the school year.~~

~~For purposes of health care supplementation, a "full-time" employee is one who works for a school district, a participating open-enrollment charter school, an education service center, or a combination of such entities for 30 or more hours each week. A "part-time" employee is one who works for a school district, a participating open-enrollment charter school, an education service center, or a combination of such entities for fewer than 30 hours each week.~~

~~Education Code 22.107; 19 TAG 61.1018~~

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*~~

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~~

	<p>premiums through a premium conversion plan. <i>Education Code 22.106</i></p>
ANNUAL ELECTION	<p>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. <i>Education Code 22.105</i></p>
DEFINITION	<p>For purposes of the designation of compensation as health care supplementation, "employee" means an active, contributing member of TRS who:</p> <ol style="list-style-type: none">1. Is employed by a district;2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insurance) or Chapter 1601 (state university employee health insurance); and4. Is not an individual performing personal services for the district as an independent contractor. <p><i>Education Code 22.101(2)</i></p>
FAIR LABOR STANDARDS ACT	<p>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)</p>
MINIMUM WAGE AND OVERTIME	<p>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 forty in any workweek. 29 U.S.C. 207(a)(1); 29 CFR pt. 778</p>
BREAKS FOR NONEXEMPT EMPLOYEES	<p>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 CFR 785.18</p> <p>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 CFR 785.19</p>

BREAKS FOR
BREASTFEEDING
NURSING MOTHERS

A district shall provide a nonexempt employee a reasonable break to express breast milk, each time the employee needs to express breast milk for her nursing child, for one year after the child's birth. The district shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

A district is not required to compensate the employee receiving reasonable break time for any work time spent for such purpose.

A district that employs fewer than 50 employees is not subject to these requirements if the requirements would impose an undue hardship by causing the district significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the district.

29 U.S.C. 207(r)

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 does not prohibit a district from compelling the use of accrued compensatory time.

29 U.S.C. 207(o); Christensen v. Harris County, 529 U.S. 576 (2000); Houston Police Officers' Union v. City of Houston, 330 F.3d 298 (5th Cir. 2003)

EXEMPT
EMPLOYEES

The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative, or professional capacity. *29 U.S.C. 213(a)(1)*

ACADEMIC
ADMINISTRATORS

The term "employee employed in a bona fide administrative capacity" includes an employee:

1. Compensated for services on a salary or fee basis at a rate of not less than \$455 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the district by which employed; and
2. Whose primary duty is performing administrative functions directly related to academic instruction or training in a district or department or subdivision thereof.

"Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

Employees engaged in academic administrative functions include:

1. The superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program;
2. The principal and any vice principals responsible for the operation of an elementary or secondary school;
3. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and
4. Other employees with similar responsibilities.

Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social

workers, psychologists, lunch room managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

29 CFR 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 CFR 541.600, 541.602(a), 541.603*

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 CFR 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 deduction unless the district willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

The best evidence of a clearly communicated policy is a written policy that was distributed to employees before the improper pay deductions by, for example, providing a copy of the policy to employees upon hire, publishing the policy in an employee handbook, or publishing the policy on a district's intranet.

29 CFR 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 CFR 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 Fair Labor Standards Act. 29 CFR 516.2(a)
PAYDAY LAW EXEMPTION	The Texas Payday Law does not apply to the state or a political subdivision. Labor Code 61.003
TRS CONTRIBUTIONS FOR NEW HIRES	<p>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.</p> <p>“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.</p> <p>On a monthly basis, a district shall:</p> <ol style="list-style-type: none">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; and2. 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. <p>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.</p> <p>Gov’t Code 825.4041</p>
TRS SURCHARGE FOR REHIRED RETIREES TRS FUND CONTRIBUTIONS	<p>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:</p> <ol style="list-style-type: none">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.~~

~~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 any difference between the amount the 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, as determined by TRS. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers.~~

~~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; Insurance Code 1575.204~~

~~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 e-mail 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~~

COMPENSATION AND BENEFITS
SALARIES AND WAGES

DEAB
(LEGAL)

MINIMUM SALARY SCHEDULE — EDUCATORS	A district shall pay each classroom teacher, full-time librarian, full-time 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.
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'LIBRARIAN'	"Librarian" means an educator who provides full-time library services and holds the relevant certificate from SBEC.
'COUNSELOR'	"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. <i>19 TAC 153.1022(a)</i>
PLACEMENT ON SALARY SCHEDULE	The Commissioner's rules determine the experience for which a teacher, librarian, counselor, or nurse is to be given credit in placing the teacher, librarian, counselor, or nurse on the minimum salary schedule. A district shall credit the teacher, librarian, counselor, or nurse for each year of experience, whether or not the years are consecutive. <i>Education Code 21.402(a), .403(c); 19 TAC 153.1022</i>
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*

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 TRS who:

1. Is employed by a district;
2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);
3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insurance) or Chapter 1601 (state university employee health insurance); and

4. Is not an individual performing personal services for the district as an independent contractor.

Education Code 22.101(2)

TRS CONTRIBUTIONS
FOR NEW HIRES

During each fiscal year, a district shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation of new members of the retirement system, during their first 90 days of employment.

“New member” means a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Government Code 822.003 and is reemployed on or after September 1, 2005.

On a monthly basis, a district shall:

1. Certify to TRS the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments under this section for the payroll periods; and
2. Retain information, as determined by TRS, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

A district must remit the amount required under this section to TRS at the same time the district remits the member’s contribution. In computing the amount required to be remitted, a district shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

Gov’t Code 825.4041

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.

COMPENSATION AND BENEFITS
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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 any difference between the amount the 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, as determined by TRS. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers.
EXCEPTION	A district is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005. <i>Gov't Code 825.4092; Insurance Code 1575.204</i>
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: <ol style="list-style-type: none"><li data-bbox="560 926 760 951">1. In person;<li data-bbox="560 978 1393 1003">2. Electronically at the employee's last known e-mail address;<li data-bbox="560 1031 1419 1098">3. Through a flyer included, in writing or electronically, as a payroll stuffer; or<li data-bbox="560 1125 1354 1150">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. <i>Labor Code 104.001-.003</i>
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. <u><i>Brajenovich v. Alief Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 021-R10-1106 (2009)</i></u>
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 21.4023

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 42.009*

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 fur-

lough 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

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BOARD AUTHORITY	<p>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. <u>Stidham v. Anahuac Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 205-R2-687 (1990)</u> (upholding reduction in force due to financial exigency)</p> <p>A district is always free to change its organizational structure as it seeks to increase its efficiency. <u>Wasserman v. Nederland Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 171-R1-784 (1988)</u></p>
CONSIDERATION FOR OPEN POSITIONS	<p>The Commissioner 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. <u>Amerson v. Houston Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 022-R2-1202 (2003)</u></p>
PROBATIONARY CONTRACT	<p>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. <u>Education Code 21.104(a), .1041, .159</u></p> <p>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. <u>Education Code 21.103(a)</u></p>
TERM CONTRACT	<p>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. <u>Education Code 21.211(a)</u></p> <p>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,</p>

TERMINATION OF EMPLOYMENT
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	<p>Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the board. <i>Education Code 21.159</i></p>
CONTINUING CONTRACT	<p>An employee employed under a continuing contract may be discharged at any time for good cause as determined by the board. <i>Education Code 21.156</i></p> <p>Continuing contract employees may be released from employment by a district at the end of a school year because of a necessary reduction of personnel. 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. <i>Education Code 21.157</i></p>
FINANCIAL EXIGENCY	<p>A hearing of a proposed action based on a declaration of financial exigency shall be conducted in the 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. <i>Education Code 21.1041, .159</i></p> <p>A board may adopt a resolution declaring a financial exigency for the district. <i>Education Code 44.011</i> [See CEA]</p>
HEARING EXAMINER	<p>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. <i>Education Code 21.251</i></p>
WARN ACT	<p>Local governments are not covered by the federal Worker Adjustment and Retraining Notification Act (WARN Act) (plant closings and mass layoffs). <i>20 C.F.R. 639.3(a)(ii)</i></p>