Localized Policy Manual Update 126

071904 San Elizario ISD

Update 126 contains local policies that require board action and adoption notification before we can incorporate the revisions into your district's Policy Online® manual. Local policies are completely within the control of each local school board. You may use the draft local policies provided, amend them, or write your own policy to meet your district's unique needs.

Please note that legal framework documents, which may not be adopted by the board, will not be published on Policy Online until the board acts on the local policies or the district specifically requests earlier publication.

What should I do to prepare for board adoption?

1. Log in to Policy Online,[1] select **Local Manual Updates** from the **My Policy Manual** menu, click **Numbered Updates**, then click **UPDATE 126**.
2. Download and save the numbered update resource materials for Update 126.
3. Present the local policies to your board for adoption. Provide your board with the explanatory notes and encourage them to review those along with the local policies.

How do I notify Policy Service that the board has adopted the update?

1. Following board action, go to **Numbered Updates**,[2] select the appropriate numbered update, then click **Notify TASB of Board Action**.
2. Fill out and submit the electronic form so we can incorporate the adopted policies into your district's Policy Online manual.
3. If there are additional changes, submit the annotated changes with your adoption notification.

Questions?

- For questions about Policy Online, visit the User's Guide[3] or contact pol-support@tasb.org.
- For questions about policy text, contact your district's assigned policy consultant.[4]

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[1] Policy Online: https://pol.tasb.org/
[2] Policy Online Numbered Updates: https://pol.tasb.org/Member/LocalManualUpdates
[3] Policy Online User's Guide: https://www.tasb.org/resources/policy-online-user-guide
[4] Policy Consultant contact information: https://pol.tasb.org/Member/PolicyConsultant/Details

Localized Policy Manual Update 126

San Elizario ISD

You can download a PDF of this update packet, annotated copies of the local policies, editable local policy text, and more under Local Manual Updates on Policy Online®.[1]

TASB Policy Service hosted and recorded a webinar to review the content of Update 126. That recorded webinar is available with your Update 126 materials on Policy Online.

Need help? Please contact your policy consultant,[2] or call Policy Service at 800-580-7529 or email policy.service@tasb.org.

Overview

Update 126 includes revisions to legal framework documents based in large part on changes resulting from the 89th Regular Legislative Session. Corresponding changes to local policies offered for consideration address the following topics:

- Board meetings and public comments
- Prohibition of certain activities by district contractors
- Cybersecurity
- Artificial intelligence
- Threshold for competitive bidding
- Designation of multiple-occupancy private spaces
- Prohibition on personal services performed by administrators
- Employee leave
- Reasons for nonrenewal
- Employee complaints
- Employee conduct
- Instructional plans
- Review of instructional materials
- Special education video/audio monitoring
- Parent-teacher conferences
- Parent portal

- Released time courses
- Epinephrine delivery systems and nonprescription medication
- Notice to staff of threats
- Notification of child abuse/neglect
- Parent/student complaints
- Video/audio monitoring of common areas
- Public complaints
- Weapons on district property

Please see the Explanatory Notes included in this update packet for a description of the specific changes for each policy.

Board action on the local policies included in the update must occur within a properly posted, open meeting of the board. Instructions for placing policy changes on the agenda for board action and keeping minutes are included with the Update 126 materials under Local Manual Updates[3] on Policy Online.

For more guidance on reviewing and adopting TASB numbered updates, including information on incorporating the update into the district's policy manual and maintaining a historical record of policies, please refer to *The Administrator's Guide to Policy Management*,[4] available in the Policy Online Governance and Management Library[5] (TASB login required).

(LEGAL) vs. (LOCAL): Remember the Difference

Legal framework documents:

- Reflect the ever-changing legal context for governance and management of the district
- Inform local decision making
- Are NOT adopted, but only reviewed

Local policies:

- Require close attention by the administration and the board
- Reflect the practices of the district and the intentions of the board
- Are changed only by board action (adopt, revise, or repeal)

Keep Your Administrative Regulations Current

Inspect your district's administrative procedures and documents — including exhibits, regulations, handbooks, and guides — that may be affected by Update 126 policy changes. If you need to make changes to the regulations or exhibits contained in your board policy manual, please notify your policy consultant.

The *Regulations Resource Manual*[6] contains model regulations and forms and is available in the Governance and Management Library (TASB login required).

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This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional adviser. Consult with your attorney or professional adviser to apply these principles to specific fact situations.

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[1] Policy Online: https://pol.tasb.org/
[2] Policy Consultant contact information: https://pol.tasb.org/Member/PolicyConsultant/Details
[3] Local Manual Updates: https://pol.tasb.org/Member/LocalManualUpdates
[4] *The Administrator's Guide to Policy Management*: https://pol.tasb.org/Member/Collections/Details?id=10
[5] Governance and Management Library: https://pol.tasb.org/Member/Collections
[6] *TASB Regulations Resource Manual*: https://pol.tasb.org/Member/Collections/Details?id=21

Instruction Sheet

TASB Localized Policy Manual Update 126

San Elizario ISD

Code	Type	Action To Be Taken	Note
ATTN	(NOTE)	No policy enclosed	See explanatory note
AE	(LEGAL)	Replace policy	Revised policy
AF	(LEGAL)	Replace policy	Revised policy
AG	(LEGAL)	Replace policy	Revised policy
AIA	(LEGAL)	Replace policy	Revised policy
AIB	(LEGAL)	Replace policy	Revised policy
AIC	(LEGAL)	Replace policy	Revised policy
AIE	(LEGAL)	Replace policy	Revised policy
B	(LEGAL)	Replace table of contents	Revised table of contents
BBA	(LEGAL)	Replace policy	Revised policy
BBB	(LEGAL)	Replace policy	Revised policy
BBBA	(LEGAL)	Replace policy	Revised policy
BBD	(LEGAL)	Replace policy	Revised policy
BBE	(LEGAL)	Replace policy	Revised policy
BE	(LEGAL)	Replace policy	Revised policy
BE	(LOCAL)	Replace policy	Revised policy
BEC	(LEGAL)	Replace policy	Revised policy
BED	(LEGAL)	Replace policy	Revised policy
BED	(LOCAL)	Replace policy	Revised policy
BF	(LEGAL)	Replace policy	Revised policy
BJA	(LEGAL)	Replace policy	Revised policy
BJB	(LEGAL)	Replace policy	Revised policy
BT	(LEGAL)	ADD policy	See explanatory note
C	(LEGAL)	Replace table of contents	Revised table of contents
CBA	(LEGAL)	Replace policy	Revised policy
CCA	(LEGAL)	Replace policy	Revised policy
CCG	(LEGAL)	Replace policy	Revised policy
CCGA	(LEGAL)	Replace policy	Revised policy
CCGB	(LEGAL)	Replace policy	Revised policy
CE	(LEGAL)	Replace policy	Revised policy
CFEA	(LEGAL)	Replace policy	Revised policy
CH	(LEGAL)	Replace policy	Revised policy
CHE	(LEGAL)	Replace policy	Revised policy
CHF	(LEGAL)	Replace policy	Revised policy

Instruction Sheet

TASB Localized Policy Manual Update 126

San Elizario ISD

Code	Type	Action To Be Taken	Note
CJ	(LEGAL)	Replace policy	Revised policy
CJ	(LOCAL)	Replace policy	Revised policy
CJA	(LEGAL)	Replace policy	Revised policy
CJA	(LOCAL)	Replace policy	Revised policy
CK	(LEGAL)	Replace policy	Revised policy
CKA	(LEGAL)	Replace policy	Revised policy
CKC	(LEGAL)	Replace policy	Revised policy
CKD	(LEGAL)	Replace policy	Revised policy
CKE	(LEGAL)	Replace policy	Revised policy
CKEA	(LEGAL)	Replace policy	Revised policy
CKEB	(LEGAL)	Replace policy	Revised policy
CL	(LEGAL)	Replace policy	Revised policy
CLB	(LEGAL)	Replace policy	Revised policy
CLE	(LEGAL)	Replace policy	Revised policy
CLE	(LOCAL)	Replace policy	Revised policy
CMD	(LEGAL)	Replace policy	Revised policy
CNA	(LEGAL)	Replace policy	Revised policy
CNC	(LEGAL)	Replace policy	Revised policy
COB	(LEGAL)	Replace policy	Revised policy
CQ	(LOCAL)	Replace policy	Revised policy
CQA	(LEGAL)	Replace policy	Revised policy
CQB	(LEGAL)	Replace policy	Revised policy
CQB	(LOCAL)	Replace policy	Revised policy
CQD	(LEGAL)	ADD policy	See explanatory note
CQD	(LOCAL)	ADD policy	See explanatory note
CRD	(LEGAL)	Replace policy	Revised policy
CS	(LEGAL)	Replace policy	Revised policy
CSA	(LEGAL)	Replace policy	Revised policy
CSA	(LOCAL)	Replace policy	Revised policy
CV	(LEGAL)	Replace policy	Revised policy
CV	(LOCAL)	Replace policy	Revised policy
DBA	(LEGAL)	Replace policy	Revised policy
DBAA	(LEGAL)	Replace policy	Revised policy
DBD	(LEGAL)	Replace policy	Revised policy

Instruction Sheet

TASB Localized Policy Manual Update 126

San Elizario ISD

Code	Type	Action To Be Taken	Note
DBD	(LOCAL)	Replace policy	Revised policy
DC	(LEGAL)	Replace policy	Revised policy
DEA	(LEGAL)	Replace policy	Revised policy
DEAA	(LEGAL)	Replace policy	Revised policy
DEC	(LEGAL)	Replace policy	Revised policy
DEC	(LOCAL)	Replace policy	Revised policy
DF	(LEGAL)	Replace policy	Revised policy
DFBA	(LEGAL)	Replace policy	Revised policy
DFBB	(LOCAL)	Replace policy	Revised policy
DFD	(LEGAL)	Replace policy	Revised policy
DFE	(LEGAL)	Replace policy	Revised policy
DG	(LEGAL)	Replace policy	Revised policy
DGA	(LEGAL)	Replace policy	Revised policy
DGBA	(LEGAL)	Replace policy	Revised policy
DGBA	(LOCAL)	Replace policy	Revised policy
DGC	(LEGAL)	Replace policy	Revised policy
DH	(LEGAL)	Replace policy	Revised policy
DH	(LOCAL)	Replace policy	Revised policy
DHB	(LEGAL)	Replace policy	Revised policy
DHC	(LEGAL)	Replace policy	Revised policy
DMA	(LEGAL)	Replace policy	Revised policy
DP	(LEGAL)	Replace policy	Revised policy
EA	(LEGAL)	Replace policy	Revised policy
EEP	(LEGAL)	ADD policy	See explanatory note
EEP	(LOCAL)	ADD policy	See explanatory note
EFA	(LEGAL)	Replace policy	Revised policy
EFA	(LOCAL)	Replace policy	Revised policy
EFB	(LEGAL)	Replace policy	Revised policy
EHA	(LEGAL)	Replace policy	Revised policy
EHAA	(LEGAL)	Replace policy	Revised policy
EHAC	(LEGAL)	Replace policy	Revised policy
EHB	(LEGAL)	Replace policy	Revised policy
EHBA	(LEGAL)	Replace policy	Revised policy
EHBAA	(LEGAL)	Replace policy	Revised policy

San Elizario ISD

Code	Type	Action To Be Taken	Note
EHBAB	(LEGAL)	Replace policy	Revised policy
EHBAC	(LEGAL)	Replace policy	Revised policy
EHBAF	(LEGAL)	Replace policy	Revised policy
EHBAF	(LOCAL)	Replace policy	Revised policy
EHBC	(LEGAL)	Replace policy	Revised policy
EHBCA	(LEGAL)	Replace policy	Revised policy
EHBE	(LEGAL)	Replace policy	Revised policy
EHBF	(LEGAL)	Replace policy	Revised policy
EHBG	(LEGAL)	Replace policy	Revised policy
EHBH	(LEGAL)	Replace policy	Revised policy
EHBK	(LEGAL)	Replace policy	Revised policy
EHDD	(LEGAL)	Replace policy	Revised policy
EHDE	(LEGAL)	Replace policy	Revised policy
EIA	(LEGAL)	Replace policy	Revised policy
EIA	(LOCAL)	Replace policy	Revised policy
EIF	(LEGAL)	Replace policy	Revised policy
EK	(LEGAL)	Replace policy	Revised policy
EKB	(LEGAL)	Replace policy	Revised policy
EKC	(LEGAL)	Replace policy	Revised policy
EKD	(LEGAL)	Replace policy	Revised policy
EL	(LEGAL)	Replace policy	Revised policy
EMB	(LEGAL)	Replace policy	Revised policy
F	(LEGAL)	Replace table of contents	Revised table of contents
FA	(LEGAL)	Replace policy	Revised policy
FA	(LOCAL)	ADD policy	See explanatory note
FD	(LEGAL)	Replace policy	Revised policy
FEA	(LEGAL)	Replace policy	Revised policy
FEB	(LEGAL)	Replace policy	Revised policy
FED	(LEGAL)	Replace policy	Revised policy
FEF	(LEGAL)	ADD policy	See explanatory note
FEF	(LOCAL)	ADD policy	See explanatory note
FFA	(LEGAL)	Replace policy	Revised policy
FFAC	(LEGAL)	Replace policy	Revised policy
FFAC	(LOCAL)	Replace policy	Revised policy

San Elizario ISD

Code	Type	Action To Be Taken	Note
FFB	(LEGAL)	Replace policy	Revised policy
FFB	(LOCAL)	Replace policy	Revised policy
FFEA	(LEGAL)	Replace policy	Revised policy
FFEB	(LEGAL)	Replace policy	Revised policy
FFF	(LEGAL)	Replace policy	Revised policy
FFF	(LOCAL)	Replace policy	Revised policy
FFG	(LEGAL)	Replace policy	Revised policy
FFG	(LOCAL)	Replace policy	Revised policy
FFH	(LEGAL)	Replace policy	Revised policy
FL	(LEGAL)	Replace policy	Revised policy
FM	(LEGAL)	Replace policy	Revised policy
FNA	(LEGAL)	Replace policy	Revised policy
FNAB	(LEGAL)	Replace policy	Revised policy
FNCD	(LEGAL)	Replace policy	Revised policy
FNCE	(LEGAL)	Replace policy	Revised policy
FNCG	(LEGAL)	Replace policy	Revised policy
FNG	(LEGAL)	Replace policy	Revised policy
FNG	(LOCAL)	Replace policy	Revised policy
FO	(LEGAL)	Replace policy	Revised policy
FO	(LOCAL)	Replace policy	Revised policy
FOA	(LEGAL)	Replace policy	Revised policy
FOB	(LEGAL)	Replace policy	Revised policy
FOC	(LEGAL)	Replace policy	Revised policy
FOD	(LEGAL)	Replace policy	Revised policy
FODA	(LEGAL)	Replace policy	Revised policy
FOE	(LEGAL)	Replace policy	Revised policy
FOF	(LEGAL)	Replace policy	Revised policy
FP	(LEGAL)	Replace policy	Revised policy
GBA	(LEGAL)	Replace policy	Revised policy
GBAA	(LEGAL)	Replace policy	Revised policy
GC	(LEGAL)	Replace policy	Revised policy
GF	(LEGAL)	Replace policy	Revised policy
GF	(LOCAL)	Replace policy	Revised policy
GKA	(LEGAL)	Replace policy	Revised policy

San Elizario ISD

Code	Type	Action To Be Taken	Note
GKA	(LOCAL)	Replace policy	Revised policy
GNB	(LEGAL)	Replace policy	Revised policy
GRAA	(LEGAL)	Replace policy	Revised policy

Explanatory Notes

TASB Localized Policy Manual Update 126

San Elizario ISD

ATTN(NOTE) GENERAL INFORMATION ABOUT THIS UPDATE

Please note:

Changes at Update 126 are based almost exclusively on legislation from the 89th Regular Legislative Session. Please note that documents provided in the legal framework are not adopted by the board.

Unless otherwise noted, references to legislative bills throughout these explanatory notes refer to Senate Bills (SB), House Bills (HB), or House Concurrent Resolutions (HCR) from the 89th Regular Legislative Session. All referenced bills have already gone into effect unless otherwise noted.

TASB Policy Service hosted and recorded a webinar to review the content of Update 126. That recorded webinar is available with your Update 126 materials on Policy Online.

AE(LEGAL) EDUCATIONAL PHILOSOPHY

HB 2 updated the existing goals of education and added an additional two.

AF(LEGAL) INNOVATION DISTRICTS

The ability for a district to exempt itself from certain laws through a District of Innovation plan was impacted by SB 12, HB 2, and HB 6. SB 571 amended and redesignated the requirements related to termination of a district's designation as a District of Innovation.

AG(LEGAL) HOME-RULE DISTRICTS

SB 571 amended the language at Education Code 12.0271 and redesignated material from Education Code 22.085 and 22.092. Changes to the legal framework have been made accordingly.

AIA(LEGAL) ACCOUNTABILITY: ACCREDITATION AND PERFORMANCE INDICATORS

An Appeal and Revision section has been added to reflect changes in 19 Administrative Code 97.1002.

AIB(LEGAL) ACCOUNTABILITY: PERFORMANCE REPORTING

A section addressing the Performance of Students Receiving Special Education Services has been added to reflect changes from HB 2.

AIC(LEGAL) ACCOUNTABILITY: INTERVENTIONS AND SANCTIONS

The section on Intervention Programs has been amended to reflect changes from HB 2.

AIE(LEGAL) ACCOUNTABILITY: INVESTIGATIONS

SB 571 added a reason the commissioner is authorized to conduct a special investigation.

B(LEGAL) LOCAL GOVERNANCE

The section B table of contents has been revised to add the new code BT, Prohibition on Diversity, Equity, and Inclusion Activities.

BBA(LEGAL) BOARD MEMBERS: ELIGIBILITY/QUALIFICATIONS

Registration as a Sex Offender has been added under Ineligibility in response to HB 3629, which prohibits an individual who must register as a sex offender from serving as a trustee.

Explanatory Notes

TASB Localized Policy Manual Update 126

San Elizario ISD

BBB(LEGAL) BOARD MEMBERS: ELECTIONS

The board may adopt a resolution to change the length of terms of trustees no later than December 31, 2030, and may change its election date to the November uniform election date in accordance with HB 3546.

BBBA(LEGAL) ELECTIONS: CONDUCTING ELECTIONS

Electioneering may not be conducted within 20 feet of a parking space designated for curbside voting in accordance with HB 521.

BBD(LEGAL) BOARD MEMBERS: TRAINING AND ORIENTATION

Revisions throughout are due to adopted amendments to 19 Administrative Code 61.1 related to board member training.

BBE(LEGAL) BOARD MEMBERS: AUTHORITY

A section relating to access to information by board members under the Public Information Act has been added pursuant to HB 4310.

BE(LEGAL) BOARD MEETINGS

SB 413 requires the recording of all board meetings. SB 413 also added language regarding inclusion in board meeting minutes of each board member's vote on any item and a requirement to post on the district's website any resolution adopted by the board. HB 1522 changed the required posting time for board agendas from 72 hours to 3 business days.

BE(LOCAL) BOARD MEETINGS

Several recommended revisions have been made to this policy on board meetings. SB 12 prompted new language at Meeting Place and Time indicating that board meetings will be held outside of typical work hours. Language at Notice to Members has been adjusted to reflect HB 1522, which requires board agendas to be posted for three business days, rather than 72 hours, before the meeting. This recommended revision appropriately adjusts when the notice of the meeting will be provided to board members.

At Deadline, the recommended revisions are also in response to HB 1522. We offer for your consideration language requiring that agenda items be submitted 10 calendar days before a meeting. This deadline would provide the district sufficient time to compile items and post an agenda by the statutory deadline. If the district would like to adjust the deadline, please contact your policy consultant.

SB 413 requires roll call voting, so the language at Record Vote has been revised accordingly. A paragraph in the Minutes section has been removed, as the statement is true for all district records and it is not necessary to separately address retention in this policy. Please refer to CPC(LOCAL) and your district's record retention procedures.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

BEC(LEGAL) BOARD MEETINGS: CLOSED MEETINGS

Trustees may now address matters of cybersecurity and critical infrastructure facilities in closed meetings, in accordance with HB 3112.

San Elizario ISD

BED(LEGAL) BOARD MEETINGS: PUBLIC PARTICIPATION

HB 5238 amended the offense of disruption of a meeting to include virtual meetings and electronic disturbances like hacking.

BED(LOCAL) BOARD MEETINGS: PUBLIC PARTICIPATION

Recommended revisions comply with the SB 12 requirement that public comment occur at the beginning of board meetings.

Please note: We have retained unchanged your unique local language limiting public comment to agenda items, with the exception of recognitions for school or community organizations highlighting student or employee awards and accomplishments, as well as restricting criticism during public comment.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

BF(LEGAL) BOARD POLICIES

A Compliance section has been added pursuant to SB 12's requirement that districts must implement and comply with policies the district is required to adopt.

BJA(LEGAL) SUPERINTENDENT: QUALIFICATIONS AND DUTIES

Provisions regarding required certifications to TEA have been added to this policy. Information on the do-not-hire registry are in accordance with HB 2. SB 12 requires board approval of the superintendent's certification relating to diversity, equity, and inclusion prohibitions. A section on Testimony Before the SBOE has also been added pursuant to SB 12.

BJB(LEGAL) SUPERINTENDENT: RECRUITMENT AND APPOINTMENT

Notice of vacant positions must now be posted five, rather than 10, school days before the date on which a district fills the position according to HB 2.

BT(LEGAL) PROHIBITION ON DIVERSITY, EQUITY, AND INCLUSION ACTIVITIES

This new policy code addresses SB 12's prohibition on diversity, equity, and inclusion activities. Definitions and prohibited activities and certification requirements are included.

C(LEGAL) BUSINESS AND SUPPORT SERVICES

The section C table of contents has been updated to reflect revised subtopics for CJA, now named Background Checks and Required Reporting, and CLE, now named Required Displayed. A new code CQD, on Artificial Intelligence, has also been added.

CBA(LEGAL) STATE AND FEDERAL REVENUE SOURCES: STATE

A section has been included to reflect that HB 2 added an allotment for basic costs of $106 for each student. At New Instructional Facility Allotment, HB 2 and HB 120 add a renovated portion of an instructional facility to the definition of a new instructional facility.

CCA(LEGAL) LOCAL REVENUE SOURCES: BOND ISSUES

HB 103, HB 3526, and SB 843 all relate to bond databases. Extensive revisions throughout comport with these new laws. HB 4395 required the addition of an Electronic Submission and Delivery subsection under Attorney General Review and Approval.

San Elizario ISD

CCG(LEGAL) LOCAL REVENUE SOURCES: AD VALOREM TAXES

HB 1522 requires specific notices to be provided when the board will discuss or adopt the budget, and HB 1453 allows districts to approve an interest and sinking (I & S) rate that exceeds the rate to maintain the same level of maintenance and operations revenue and pay debt service under specific conditions. Sections have been added to address these requirements. A deletion at Voter-Approval Tax Rate is due to HB 2. SB 1502 restricts a district's ability to approve disaster pennies. At Proposition, SB 1025 requires a proposition that increases a tax to include the statement "THIS IS A TAX INCREASE."

CCGA(LEGAL) AD VALOREM TAXES: EXEMPTIONS AND PAYMENTS

Contingent on a constitutional amendment, SB 4 will raise the homestead exemption to $140,000. SB 23, also contingent on a constitutional amendment, raises the disabled and elderly exemption to $60,000. HB 2742 amends the requirements around split payments for districts that collect their own taxes and eliminates Tax Code 31.04(c). Other revisions have been made for clarity.

CCGB(LEGAL) AD VALOREM TAXES: ECONOMIC DEVELOPMENT

SB 2900 repealed the JETI Oversight Committee, so related language in the Governor Action on Application section has been removed. HB 1620 repealed Tax Code 313.007, which was found in the Texas Economic Development Act section.

CE(LEGAL) ANNUAL OPERATING BUDGET

Language at Authorized Expenditures has been updated to reflect changes from HB 2.

CFEA(LEGAL) PAYROLL PROCEDURES: SALARY DEDUCTIONS AND REDUCTIONS

The Professional or Other Dues section has been amended to address HB 2 changes for salary deductions.

CH(LEGAL) PURCHASING AND ACQUISITION

SB 1173 changes the competitive procurement threshold from $50,000 to $100,000.

Please note: In many districts' CH(LOCAL), the purchasing authority of the superintendent is established. This is a different threshold from what has been changed statutorily. For that reason, CH(LOCAL) is not included in this update. Please review your CH(LOCAL) and, if any revisions are necessary, please contact your policy consultant.

CHE(LEGAL) PURCHASING AND ACQUISITION: VENDOR DISCLOSURES AND CONTRACTS

HB 210 creates a criminal offense for a vendor to bid or contract with the district if it has a close relationship with a trustee. A new section called Prohibited Activities by Vendors has been created to reflect this change. SB 33 adds to the prohibition against using taxpayer resource transactions for abortion-related expenses.

CHF(LEGAL) PURCHASING AND ACQUISITION: PAYMENT PROCEDURES

Language has been added to reflect an exception to the Exception for bona fide disputes between a district and vendor for purposes of prompt payment in construction projects, in accordance with HB 3005.

CJ(LEGAL) CONTRACTED SERVICES

A section on Severance Pay has been added to address HB 762, which restricts severance agreements for independent contractors. The provisions also apply to employees, as reflected in policy DEA.

San Elizario ISD

CJ(LOCAL) CONTRACTED SERVICES

Recommended new provisions reflect that contractors may not engage in or assign instructional activities prohibited by law or diversity, equity, and inclusion (DEI) duties under SB 12. Violations will result in termination of the contract.

CJA(LEGAL) CONTRACTED SERVICES: BACKGROUND CHECKS AND REQUIRED REPORTING

The subtopic of this code, previously Criminal History, has been renamed Background Checks and Required Reporting. SB 571 transferred Education Code 22.085 to Chapter 22A and redesignated it as 22A.157. That change is reflected at Disqualifying Conviction and District Responsibility to Ensure Compliance. Extensive new sections on Requirement to Report Service Provider Misconduct and Consent for Release of Records and Preservice Affidavit have been added pursuant to SB 571.

CJA(LOCAL) CONTRACTED SERVICES: BACKGROUND CHECKS AND REQUIRED REPORTING

The subtopic name has been adjusted to Background Checks and Required Reporting to more accurately describe the contents of the legal framework at this code. No changes have been made to the local text, and the district has not been charged for this revision.

CK(LEGAL) SAFETY PROGRAM/RISK MANAGEMENT

SB 57 changes at the Responsibilities subsection under Safety and Security Committee reflect the need to recommend accommodations for a student with an IEP or 504 plan. Additional changes from SB 57 are reflected in the Meetings subsection. HB 33 and HB 121 both speak to Sheriff-Led School Safety Meetings, which apply differently depending on the size of the county. A section about Public Information Officer for Emergency Communications has been added based on new requirements in HB 33. A clerical error in a citation as well as codes that were redesignated during the legislative session have been corrected.

CKA(LEGAL) SAFETY PROGRAM/RISK MANAGEMENT: SAFETY AND SECURITY AUDITS AND MONITORING

Revisions throughout are in compliance with HB 33, HB 2, and HB 121.

CKC(LEGAL) SAFETY PROGRAM/RISK MANAGEMENT: EMERGENCY PLANS

At Emergency Response Map and Walk-Through, the requirement to provide a map to the Department of Public Safety has been included in compliance with HB 121. Changes in the Emergency Operations Plan section are due to changes from HB 33, HB 131, SB 57, and HB 121. SB 57 made significant changes to Education Code 37.1086, as reflected in the Recommendations and Guidelines for Individuals with Disabilities or Impairments section. The requirement to provide information to parents about safe firearm storage three times per year pursuant to HB 121 is in the Safe Firearm Storage section. At Confidential Information under the Texas Disaster Act, the language has been amended to reflect changes from HB 132.

CKD(LEGAL) SAFETY PROGRAM/RISK MANAGEMENT: EMERGENCY MEDICAL EQUIPMENT AND PROCEDURES

The Automated External Defibrillators section has been amended to include, amongst other changes, an Inspection subsection that is required under SB 865. The Cardiac Emergency Response Plan has also been amended to meet the requirements of that bill. A section on Airway Clearance Devices has been added pursuant to HB 549.

San Elizario ISD

CKE(LEGAL) SAFETY PROGRAM/RISK MANAGEMENT: SECURITY PERSONNEL

Retired and reserve police officers are addressed in the Armed Security Officer Required section pursuant to HB 1458. Language regarding the expiration and renewal of good cause exceptions to the armed security officer requirement is included from HB 121. HB 121 also necessitated additional language in the Alternative Standard section.

CKEA(LEGAL) SECURITY PERSONNEL: COMMISSIONED PEACE OFFICERS

Language has been added pursuant to HB 33, which requires law enforcement agencies to have a Public Information Officer for Emergency Communications. Reserve police officers, as allowed in HB 1458, are similarly addressed in a new section. In accordance with HB 33, an Active Shooter Incident subsection has been added under Required Policies, along with a section requiring Access to a Breaching Tool and Ballistic Shield. A section on Donation of Surplus Law Enforcement Equipment to a School District has been included pursuant to HB 1851. Law enforcement agencies are authorized to acquire and possess epinephrine delivery systems, and that section has been updated due to changes in SB 1619. HB 4504 from the 88th Regular Legislative Session necessitated an update to the Code of Criminal Procedure citations throughout.

CKEB(LEGAL) SECURITY PERSONNEL: SCHOOL MARSHALS

Language at Board Regulations has been revised to reflect that uniformed school marshals may now open carry a firearm on campus pursuant to SB 870. HB 4504 from the 88th Regular Legislative Session necessitated an update to the Code of Criminal Procedure citations throughout.

CL(LEGAL) BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

HB 2 creates a requirement for districts to report facility usage to TEA.

CLB(LEGAL) BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT: MAINTENANCE

A section on Fire Safety Inspection Reports has been included to reflect that SB 1177 requires fire safety inspections to include inspections of automated external defibrillators (AEDs) and that fire safety reports be filed at the campus level.

CLE(LEGAL) BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT: REQUIRED DISPLAYS

The subtopic name has been adjusted to Required Displays to more accurately describe the contents at this code. A section heading for Flags has been added for clarity. SB 10's requirements regarding conspicuously displaying the Ten Commandments have been added.

CLE(LOCAL) BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT: REQUIRED DISPLAYS

The subtopic name has been adjusted to Required Displays to more accurately describe the contents of the legal framework at this code. No changes have been made to the local text, and the district has not been charged for this revision.

CMD(LEGAL) EQUIPMENT AND SUPPLIES MANAGEMENT: INSTRUCTIONAL MATERIALS CARE AND ACCOUNTING

19 Administrative Code 67.1003(i), which became effective June 8, 2025, relates to district entitlement to state aid regardless of whether the district uses the amount provided during the school year, and has been included here. Extensive additions regarding open education resource instructional materials has

San Elizario ISD

been added pursuant to 19 Administrative Code 67.1004, which also became effective June 8, 2025. SB 13 allows instructional material and technology allotment funds to be used for costs associated with complying with Education Code 33.023, which is set out more fully in EFB, and is referenced here. Beginning in the 2026-27 school year, districts may not adopt or use instructional material included on the list of rejected instructional materials maintained by the SBOE, and that has been included at Prohibited Expenditures. New provisions regarding commissioner's rules relating to the Instructional Materials and Technology Allotment have been added in accordance with 19 Administrative Code 67.1001, which became effective June 8, 2025. Changes at Requisitions, Use, and Distribution have been made pursuant to HB 2.

CNA(LEGAL) TRANSPORTATION MANAGEMENT: STUDENT TRANSPORTATION

A section on Special Transportation Services has been added after HB 2 amended Education Code 48.151(g).

CNC(LEGAL) TRANSPORTATION MANAGEMENT: TRANSPORTATION SAFETY

School buses are required to be equipped with three-point seat belts by 2029 in accordance with SB 546. Language to that effect has been added, including required reports that must be submitted to TEA if a board determines that the district’s budget does not permit the district to purchase a bus equipped with the required seat belts.

COB(LEGAL) FOOD AND NUTRITION MANAGEMENT: FREE AND REDUCED-PRICE MEALS

SB 314 applies beginning with the 2026-27 school year, which necessitated a section on Prohibition on Certain Additives.

CQ(LOCAL) TECHNOLOGY RESOURCES

Provisions regarding artificial intelligence (AI) have been recoded to CQD(LOCAL), which is a new code created to specifically address AI training and the use of AI in the district. We have also included the addition of your locally developed text regarding Personal Recording Devices per the district administration’s request.

CQA(LEGAL) TECHNOLOGY RESOURCES: DISTRICT, CAMPUS, AND CLASSROOM WEBSITES

SB 12 creates a deadline for updating board information online and adds annual updating to TEA. Those changes are reflected in the Required Trustee Information subsection. Rule changes also necessitated an update to a citation in the Required Website Postings section. Additional required postings listed come from SB 12 and SB 13.

CQB(LEGAL) TECHNOLOGY RESOURCES: CYBERSECURITY

HB 150 moves cybersecurity duties from the Department of Information Resources (DIR) to Texas Cyber Command. Both HB 150 and HB 1500 amend the requirements relating to training. HB 1500 also changes who takes cybersecurity training. HB 150 provides a definition of "cybersecurity incident." Finally, HB 5331 affects contracts for cybersecurity insurance.

CQB(LOCAL) TECHNOLOGY RESOURCES: CYBERSECURITY

Recommended revisions comply with HB 150, which moves cybersecurity training requirements from the Department of Information Resources to the Texas Cyber Command and includes details about notifications for cybersecurity incidents in addition to security breaches.

San Elizario ISD

CQD(LEGAL) TECHNOLOGY RESOURCES: ARTIFICIAL INTELLIGENCE

This new code includes information relating to artificial intelligence (AI) based on new laws from SB 1964 (regulating the use of AI by governmental entities), HB 149 (regulating the use of AI), and HB 150 and HB 1500 (addressing training related to AI).

CQD(LOCAL) TECHNOLOGY RESOURCES: ARTIFICIAL INTELLIGENCE

This new recommended policy addresses artificial intelligence training requirements based on HB 150 and HB 1500, as well as the use of artificial intelligence by district employees and students.

CRD(LEGAL) INSURANCE AND ANNUITIES MANAGEMENT: HEALTH AND LIFE INSURANCE

Qualifying districts that discontinued participation in TRS-ActiveCare may elect to participate based on HB 3126.

CS(LEGAL) FACILITY STANDARDS

The date of the International Energy Conservation Code is no longer relevant and has been removed.

CSA(LEGAL) FACILITY STANDARDS: SAFETY AND SECURITY

HB 121 puts an expiration date on the HB 3 good cause exception relating to Safety and Security Requirements for Facilities, so the requirement to renew the exception at least every five years has been included, in addition to a subsection on Security Review. The requirement to have at least one breaching tool and one ballistic shield available for use at each campus has also been included. SB 1620 necessitated a citation adjustment.

SB 8 from the Second Special Session becomes effective December 4, 2025. In addition to providing definitions, it requires districts to designate each multiple-occupancy private space for use only by individuals of one sex and to take every reasonable step to ensure an individual does not enter the wrong private space. SB 8 also provides for investigations by the attorney general, private causes of action, and civil penalties.

CSA(LOCAL) FACILITY STANDARDS: SAFETY AND SECURITY

SB 8 from the Second Special Session prompted the inclusion of a section on Designation and Use of Private Spaces. The superintendent is directed to designate private spaces in accordance with law and to develop regulations to ensure compliance.

CV(LEGAL) FACILITIES CONSTRUCTION

The procurement threshold for contracts has increased to $100,000. HB 1620 required a citation adjustment. SB 687 adds land surveyors to the statute pertaining to architects and engineers.

CV(LOCAL) FACILITIES CONSTRUCTION

As reflected in CH(LEGAL), the competitive purchasing threshold established in law has changed from $50,000 to $100,000. The language at Construction Contracts is recommended for revision here to refer to the legal threshold rather than a specific dollar amount. Policy BJA(LOCAL) establishes the superintendent's delegation authority; therefore "or designee" is recommended for deletion at Project Administration.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

San Elizario ISD

Please note: The superintendent's authority to approve construction contracts is reflected with a dollar amount in many districts' CV(LOCAL) that matched the previous competitive purchasing threshold. We have not revised the provisions reflecting the superintendent's authority to approve construction contracts. If the board wishes to update the superintendent's authority to approve contracts, please contact your policy consultant.

DBA(LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS: CREDENTIALS AND RECORDS

Under Notice to Parents, HB 2 requires the superintendent to use, if available, the model notice provided by TEA. HB 2 also prohibits using a District of Innovation plan to exempt from the notice requirement. Teacher certification requirements were impacted heavily by HB 2, which required additional language at Professional Personnel. HB 2 also impacted the School District Teaching Permit section. SB 865 amends the requirement for cardiopulmonary resuscitation (CPR) certifications, which has been updated at CPR and AED Certification.

DBAA(LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS: PRE-EMPLOYMENT REVIEWS

Revisions throughout are due to SB 571. New language reflects additional offenses included in the crimes prohibiting employment with the district and removes the victim age requirement.

DBD(LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS: CONFLICT OF INTEREST

A section on Personal Services Performed by Administrators, often referred to as "moonlighting," has been added to reflect changes from HB 3372.

DBD(LOCAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS: CONFLICT OF INTEREST

A new recommended section on Personal Services Performed by an Administrator includes language relating to administrator work from HB 3372.

DC(LEGAL) EMPLOYMENT PRACTICES

HB 2 amends Education Code 11.1513 to change the requirement for posting of vacancies from 10 days to five days. HB 2 also requires an employment policy relating to daily rate of pay, which is found in DEC(LOCAL).

DEA(LEGAL) COMPENSATION AND BENEFITS: COMPENSATION PLAN

The Increase in Basic Allotment and Maintenance of Salary sections have been deleted after HB 2 repealed those provisions. A section on Severance Pay has been added based on HB 762. Under TRS Surcharge for Rehired Retirees, the No Recovery of Costs subsection has been deleted pursuant to HB 2. The Temporary Exception subsection has been deleted as that provision has expired.

DEAA(LEGAL) COMPENSATION PLAN: INCENTIVES AND STIPENDS

Extensive revisions throughout this policy reflect changes from HB 2.

DEC(LEGAL) COMPENSATION AND BENEFITS: LEAVES AND ABSENCES

A subsection addressing the option for classroom teachers to use noncurrent use of Family Medical Leave has been added pursuant to HB 2. A section on Daily Rate of Pay has also been added pursuant to HB 2.

San Elizario ISD

DEC(LOCAL) COMPENSATION AND BENEFITS: LEAVES AND ABSENCES

HB 2 prompted recommended revisions to include Daily Rate of Pay under the Definitions section, as well as a section regarding Concurrent Use of Paid Leave during Family and Medical Leave for classroom teachers.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

DF(LEGAL) TERMINATION OF EMPLOYMENT

SB 12 adds sanctions through the State Board for Educator Certification for encouraging a child to withhold evidence. SB 571 renumbered the provisions regarding the do-not-hire registry and expanded the misconduct included. SB 571 also changes the offenses requiring termination, which is reflected here. Based on SB 12, sections addressing Prohibition on DEI and Prohibited Classroom Instruction have also been included.

DFBA(LEGAL) TERM CONTRACTS: SUSPENSION/TERMINATION DURING CONTRACT

SB 571 renumbered the statute and changed timelines for principals to report misconduct to the superintendent.

DFBB(LOCAL) TERM CONTRACTS: NONRENEWAL

Based on SB 12, engaging or assigning diversity, equity, and inclusion duties, as well as instructional activities prohibited by law, are recommended for inclusion in the list of reasons a term contract employee may be nonrenewed. The item related to disability and the ability to perform the essential functions of the job has been amended for clarity.

DFD(LEGAL) TERMINATION OF EMPLOYMENT: HEARINGS BEFORE HEARING EXAMINER

A section on Dismissal of hearings before a hearing examiner has been included to reflect changes in HB 2.

DFE(LEGAL) TERMINATION OF EMPLOYMENT: RESIGNATION

Under Contract Abandonment, a subsection on Sanctions Prohibited has been included pursuant to HB 2. The Good Cause subsection has been removed as the rule it is based on conflicts with provisions in HB 2. Revisions in the Mitigating Factors section are due to rule changes found in 19 Administrative Code 249.17 that were published on May 18, 2025. Revisions in Required Report to SBEC, Investigation, and Report by Principal are due to SB 571.

DG(LEGAL) EMPLOYEE RIGHTS AND PRIVILEGES

In response to SB 11, new provisions are included to address the option of a board to adopt a policy designating a time for prayer and reading of the Bible or other religious text. The new law requires the board to take a vote on whether to permit this activity within six months of the legislation’s effective date. Since the law was effective on September 1, the board would need to take a vote prior to March 1, 2026. [See also FNA(LEGAL), below.]

Also, a section on Right to Engage in Religious Speech or Prayer has been included pursuant to SB 965.

DGA(LEGAL) EMPLOYEE RIGHTS AND PRIVILEGES: FREEDOM OF ASSOCIATION

HB 2 tasks TEA with providing services for a classroom teacher and prohibits districts from interfering.

San Elizario ISD

DGBA(LEGAL) PERSONNEL-MANAGEMENT RELATIONS: EMPLOYEE COMPLAINTS/GRIEVANCES

All of the revisions in this policy reflect applicable changes from SB 12. Substantially similar revisions are being made to the grievance policies at FNG, regarding student and parent complaints, and GF, regarding public complaints.

DGBA(LOCAL) PERSONNEL-MANAGEMENT RELATIONS: EMPLOYEE COMPLAINTS/GRIEVANCES

All recommended revisions to this local policy on employee complaints stem from the applicable portions of SB 12.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

DGC(LEGAL) EMPLOYEE RIGHTS AND PRIVILEGES: IMMUNITY

SB 920 necessitated a revision related to immunities under Administration of Medication. HB 6 led to the addition of the section on Immunity for Disciplinary Actions.

DH(LEGAL) EMPLOYEE STANDARDS OF CONDUCT

Provisions regarding Duty to Report have always been in FFG(LEGAL) but have been duplicated here to ensure prominent placement and understanding. Sections on Retaliation Against Grievant and Social Transitioning have been included pursuant to SB 12. In the Low-THC Cannabis section, storage has been added pursuant to HB 46.

DH(LOCAL) EMPLOYEE STANDARDS OF CONDUCT

The recommended revision to the text at Weapons Prohibited – Exceptions reflects changes under SB 706 regarding reciprocity with a handgun license from another state. Sections on Prohibited Classroom Instruction or Activities; Prohibited Diversity, Equity, and Inclusion Duties; and Social Transitioning are recommended for inclusion pursuant to SB 12. At Relationships with Students, the recommended revision addresses the requirement under SB 571 regarding notice of suspected misconduct by an educator or district service provider.

Please note: Per the district administration's request, we have included your locally developed language regarding Recordings.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

DHB(LEGAL) EMPLOYEE STANDARDS OF CONDUCT: REPORTS TO STATE BOARD FOR EDUCATOR CERTIFICATION

Substantial revisions throughout this code are required pursuant to SB 571. Revisions relating to Solicitation of a Romantic Relationship are due to rule changes at 19 Administrative Code 249.3.

DHC(LEGAL) EMPLOYEE STANDARDS OF CONDUCT: REPORTS TO TEXAS EDUCATION AGENCY

Substantial revisions throughout reflect changes from SB 571.

San Elizario ISD

DMA(LEGAL) PROFESSIONAL DEVELOPMENT: REQUIRED STAFF DEVELOPMENT

Revisions at Cybersecurity are due to HB 150. A new section on Artificial Intelligence Training is included in accordance with HB 3512. A new section for Mathematics Achievement Academies is included to reflect changes in HB 2. Information relating to CPR has been included pursuant to SB 865.

DP(LEGAL) PERSONNEL POSITIONS

Changes relating to school psychologists result from HB 2598. All other revisions are due to SB 571.

EA(LEGAL) INSTRUCTIONAL GOALS AND OBJECTIVES

Revisions at College, Career, and Military Readiness Plans as well as at Website Posting are due to HB 2.

EEP(LEGAL) INSTRUCTIONAL ARRANGEMENTS: LESSON PLANS

This new legal framework document contains the SB 12 legal requirements for Disclosure of Instructional Plans.

EEP(LOCAL) INSTRUCTIONAL ARRANGEMENTS: LESSON PLANS

This new local policy includes recommended language from SB 12 on instructional plans and course syllabi.

EFA(LEGAL) INSTRUCTIONAL RESOURCES: INSTRUCTIONAL MATERIALS

A subsection on Notice of Entitlement to Review Materials has been added pursuant to SB 12. Provisions at Parent Request for Instructional Material Review, including Mandatory Review on Petition by Group of Parents, have been added based on a new rule at 19 Administrative Code 67.69.

EFA(LOCAL) INSTRUCTIONAL RESOURCES: INSTRUCTIONAL MATERIALS

In accordance with SB 12, a section on Parent Request for Instructional Material Review is recommended for inclusion. The policy requires the superintendent to develop administrative regulations to ensure that parents or guardians can request review of instructional materials individually or through a petition process with other parents.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

EFB(LEGAL) INSTRUCTIONAL RESOURCES: LIBRARY MATERIALS

The School Library section has been deleted based on the 5th Circuit decision in *Little v. Llano County* and new provisions in SB 13 related to removal of library materials during challenges. The remaining revisions regarding the procurement of library materials are also in response to SB 13.

EHA(LEGAL) CURRICULUM DESIGN: BASIC INSTRUCTIONAL PROGRAM

Changes to Videotape or Recording to include "or contractor" are from SB 12.

San Elizario ISD

EHAA(LEGAL) BASIC INSTRUCTIONAL PROGRAM: REQUIRED INSTRUCTION (ALL LEVELS)

A subsection on Parent Consent within the Human Sexuality Instruction section has been added due to SB 12. A cross-reference to EEP(LEGAL) has been added at Scope and Sequence and Instructional Materials for clarity after SB 12 revisions.

EHAC(LEGAL) BASIC INSTRUCTIONAL PROGRAM: REQUIRED INSTRUCTION (SECONDARY)

A change relating to substituting AP courses has been added at Personal Financial Literacy, pursuant to HB 27. Nutrition and Wellness information has also been included, based on SB 25.

EHB(LEGAL) CURRICULUM DESIGN: SPECIAL PROGRAMS

Removal of the definitions of dyslexia and related disorders and changes at Screening, Testing, and Identification and at Talking Book Program Notification are all based on HB 2.

EHBA(LEGAL) SPECIAL PROGRAMS: SPECIAL EDUCATION

HB 2 prompted new language related to specialized technical assistance at Interventions and Sanctions as well as the removal of a parenthetical at State-Supported Living Center referring to state schools.

EHBAA(LEGAL) SPECIAL EDUCATION: IDENTIFICATION, EVALUATION, AND ELIGIBILITY

SB 2 prompted the addition of a Students Not Enrolled in District section, which contains full and individual initial evaluation requirements. The language at Psychological Examinations was repealed by HB 2 and has been removed. A new section at Children with Visual Impairments and revisions at Eligibility and Reevaluations and at Visual and Auditory Impairments are also due to HB 2.

EHBAB(LEGAL) SPECIAL EDUCATION: ARD COMMITTEE AND INDIVIDUALIZED EDUCATION PROGRAM

Language at Intellectual Disability and Developmental Delay Information has been added as a result of HB 1188. All other revisions have been made pursuant to HB 2.

EHBAC(LEGAL) SPECIAL EDUCATION: STUDENTS IN NONDISTRICT PLACEMENT

HB 2 prompted revisions at Residential Placement as well as at Grant for Community-Based Support Services.

EHBAF(LEGAL) SPECIAL EDUCATION: VIDEO/AUDIO MONITORING

The term "contractor" has been added at Parent Consent Not Required due to SB 12. The definition of "self-contained" has been deleted and that term has been replaced with "special educational classroom" throughout in accordance with HB 2. A definition of “special education classroom or other special education setting” has been added.

EHBAF(LOCAL) SPECIAL EDUCATION: VIDEO/AUDIO MONITORING

The enclosed revisions are recommended to update language regarding special education classrooms in accordance with HB 2 and to update the timeframe for reporting suspected misconduct or child abuse as required by SB 571.

San Elizario ISD

EHBC(LEGAL) SPECIAL PROGRAMS: COMPENSATORY SERVICES AND INTENSIVE PROGRAMS

The Use subsection under Compensatory Education Allotment has been deleted due to HB 2, which repealed Education Code 48.104(k). The provision on Virtual School Network has also been deleted, as it was repealed by SB 569. Amendments at At-Risk Student are due to SB 991. The Accelerated Instruction Program section has been deleted due to the repeal of Education Code 28.006(g) and (g-1) by HB 2.

EHBCA(LEGAL) COMPENSATORY SERVICES AND INTENSIVE PROGRAMS: ACCELERATED INSTRUCTION

HB 2 prompted the addition of language at High-Impact Tutoring Providers.

EHBE(LEGAL) SPECIAL PROGRAMS: BILINGUAL EDUCATION/ESL

Revisions at Exceptions and Waivers under the Bilingual and ESL Programs section are due to HB 2.

EHBF(LEGAL) SPECIAL PROGRAMS: CAREER AND TECHNICAL EDUCATION

Revisions at Certification Subsidy are due to HB 2. A section on Applied Sciences Pathway Program has been added pursuant to HB 20.

EHBG(LEGAL) SPECIAL PROGRAMS: PREKINDERGARTEN

Revisions throughout are due to HB 2.

EHBH(LEGAL) SPECIAL PROGRAMS: OTHER SPECIAL POPULATIONS

Revisions throughout are pursuant to HB 2.

EHBK(LEGAL) SPECIAL PROGRAMS: OTHER INSTRUCTIONAL INITIATIVES

A section on Gifted and Talented Week has been added pursuant to HCR 64.

EHDD(LEGAL) ALTERNATIVE METHODS FOR EARNING CREDIT: COLLEGE COURSE WORK/DUAL CREDIT

A note referencing the Texas Virtual School Network (TXVSN) has been removed pursuant to a repeal by SB 569. Language added at the FAST Program section is from HB 2, and other revisions to that section are due to SB 1786.

EHDE(LEGAL) ALTERNATIVE METHODS FOR EARNING CREDIT: DISTANCE LEARNING

Substantial additions to this legal framework document have been made related to Virtual and Hybrid Courses due to SB 569. Provisions related to the TXVSN have been removed, also due to SB 569.

EIA(LEGAL) ACADEMIC ACHIEVEMENT: GRADING/PROGRESS REPORTS TO PARENTS

SB 12 prompted amended language at Progress Reports and Conferences.

EIA(LOCAL) ACADEMIC ACHIEVEMENT: GRADING/PROGRESS REPORTS TO PARENTS

Recommended revisions reflect the SB 12 requirement that each parent of a student be afforded the opportunity for at least two in-person conferences with the student's teacher per year. At Academic Dishon-

San Elizario ISD

esty, language is recommended that indicates the use of artificial intelligence without permission constitutes academic dishonesty.

EIF(LEGAL) ACADEMIC ACHIEVEMENT: GRADUATION

SB 2314 prompted amendments at High School Diploma as well as an additional section on Direct Admissions Data Sharing Election. Revisions in the Endorsements section are due to HB 2.

EK(LEGAL) TESTING PROGRAMS

Amended language at Benchmark Assessment Instruments is due to terminology changes found in SB 1418. College Preparation Assessments revisions were prompted by HB 2.

EKB(LEGAL) TESTING PROGRAMS: STATE ASSESSMENT

Revisions at Accountability Testing are due to rule changes found at 19 Administrative Code 101.4002.

EKC(LEGAL) TESTING PROGRAMS: READING ASSESSMENT

Substantial revisions throughout are due to HB 2.

EKD(LEGAL) TESTING PROGRAMS: MATHEMATICS ASSESSMENT

The Mathematics Diagnosis section has been removed since Education Code 28.007 was repealed by HB 2. A section on Mathematics Instruments has been added based on the same bill.

EL(LEGAL) CAMPUS OR PROGRAM CHARTERS

The Failure to Discharge or Refuse to Hire section has been amended based on SB 571.

EMB(LEGAL) MISCELLANEOUS INSTRUCTIONAL POLICIES: TEACHING ABOUT CONTROVERSIAL ISSUES

Revisions throughout are due to SB 12.

F(LEGAL) STUDENTS

The section F table of contents has been revised to update the subtopic name for policy code FOB from Out-of-School Suspension to Suspension since that code now houses provisions on in-school and out-of-school suspension. In addition, the subtopic for policy code FNCE has been updated from Personal Telecommunications/Electronic Devices to Personal Communication Devices/Electronic Devices.

FA(LEGAL) PARENT RIGHTS AND RESPONSIBILITIES

A section on Right to Select School has been added pursuant to HB 2495. A statement prohibiting boards from adopting rules or policy regulating home schools has been added due to HB 2674. All other revisions have been made because of SB 12, including the addition of a Policy on Parental Engagement section. A district's policy on parental engagement must provide for an internet portal through which parents may submit comments to administrators and the board, require the board to prioritize public comments by presenting those comments at the beginning of the meeting, and require board meetings to be held outside of typical work hours.

FA(LOCAL) PARENT RIGHTS AND RESPONSIBILITIES

This new local policy is recommended for inclusion in the district's manual to address the SB 12 requirement to establish a parent portal on the district's website, through which parents may submit comments to administrators or the board.

San Elizario ISD

FD(LEGAL) ADMISSIONS

A section on Parental Child Safety Placement has been added pursuant to SB 226. The section on Foreign Military Force Parent has been added due to HB 2757.

FEA(LEGAL) ATTENDANCE: COMPULSORY ATTENDANCE

Revisions and citation changes at Accelerated, Intervention, and Compensatory Programs are due to HB 2. Under Excused Absences for Compulsory Attendance Determinations, attending a released time course has been added pursuant to SB 1049. SB 207 made clear that Health-Care Appointments includes appointments with mental health professionals, which has been added. HB 367 added specific requirements relating to Serious or Life-Threatening Illness and the form that the district must use for this purpose.

FEB(LEGAL) ATTENDANCE: ATTENDANCE ACCOUNTING

A new section on Emergency or Crisis has been added pursuant to SB 569.

FED(LEGAL) ATTENDANCE: ATTENDANCE ENFORCEMENT

HB 4504 from the 2023 88th Regular Legislative Session necessitated an update to the Code of Criminal Procedure citation relating to expunction of records.

FEF(LEGAL) ATTENDANCE: RELEASED TIME

This new legal framework document reflects the requirements around released time courses in SB 1049.

FEF(LOCAL) ATTENDANCE: RELEASED TIME

This local policy is recommended for inclusion in the district's manual to reflect SB 1049 requirements regarding released time courses.

FFA(LEGAL) STUDENT WELFARE: WELLNESS AND HEALTH SERVICES

Substantial revisions throughout are due to SB 12.

FFAC(LEGAL) WELLNESS AND HEALTH SERVICES: MEDICAL TREATMENT

SB 9 permits employees, including nurses, to administer nonprescription medication to a student without receiving additional documentation from that student's health care provider if the parent consents. Revisions at Administering Medication reflect those changes. SB 1619 required adding a definition of epinephrine delivery system and replacing "epinephrine auto-injector" with "epinephrine delivery system" throughout the policy. New Concussion Response Policy and Academic Accommodations sections were added in response to SB 2398. A citation error has been corrected at Maintenance and Administration of Medication for Respiratory Distress.

FFAC(LOCAL) WELLNESS AND HEALTH SERVICES: MEDICAL TREATMENT

A recommended revision at Medication Provided by Parent has been made due to SB 920, which now allows school employees, including nurses, to administer nonprescription medication in accordance with legal requirements.

At Epinephrine, references to "epinephrine auto-injector" have been updated to "epinephrine delivery system" in accordance with SB 1619.

San Elizario ISD

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

FFB(LEGAL) STUDENT WELFARE: CRISIS INTERVENTION

A new item 6 at Threat Assessment and Safe and Supportive Schools Team has been added due to HB 2. Revisions to the General Team Composition subsection under Membership have been made pursuant to HB 6. All other revisions are due to HB 121.

FFB(LOCAL) STUDENT WELFARE: CRISIS INTERVENTION

As required by HB 2, a provision is recommended for inclusion addressing the required notification that must be provided to teaching staff when a threat is made against the campus.

FFEA(LEGAL) COUNSELING AND MENTAL HEALTH: COUNSELING

Additional text at Higher Education Counseling has been included due to HB 2. The citation adjustment at Automatic Admission is due to rule redesignation to 19 Administrative Code 78.2001.

FFEB(LEGAL) COUNSELING AND MENTAL HEALTH: MENTAL HEALTH

Changes have been made at Consent to Examinations, Tests, and Treatment and a cross-reference to materials regarding parental consent for psychological and psychiatric exams, tests, and treatment has been added in response to changes made by SB 12.

FFF(LEGAL) STUDENT WELFARE: STUDENT SAFETY

A section on Notice of Suspected Criminal Offense has been added due to SB 12. All other revisions and additions have been made pursuant to SB 571.

FFF(LOCAL) STUDENT WELFARE: STUDENT SAFETY

HB 2 prompted recommended revisions to this local policy regarding notifying a parent of a student with whom an employee or service provider is alleged to have engaged in misconduct.

FFG(LEGAL) STUDENT WELFARE: CHILD ABUSE AND NEGLECT

Definition changes are due to HB 1106, HB 1151, and SB 571. Reports of suspected abuse or neglect must now be made within 24, rather than 48, hours pursuant to SB 571. SB 571 additionally defined the law enforcement agencies to which such a report may be made at Abuse and Neglect Involving School Personnel and Those Responsible for Care. A section on Civil Liability has been included due to HB 4623. Citation changes at SBEC Disciplinary Action have been made pursuant to SB 571. The new 24 hour reporting requirement from SB 571 is also reflected in the Reporting Policy section.

FFG(LOCAL) STUDENT WELFARE: CHILD ABUSE AND NEGLECT

A recommended change at Reporting Child Abuse or Neglect reflects that SB 571 requires reporting within 24 hours of learning of the facts giving rise to suspicion of abuse or neglect of a child. The revision to item 1 at Making a Report also comes from SB 571.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

San Elizario ISD

FFH(LEGAL) STUDENT WELFARE: FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

A section on Civil Liability has been added pursuant to HB 4623.

FL(LEGAL) STUDENT RECORDS

A section on Vital Statistics Records has been added due to changes in HB 229. Under Disclosure with Consent, a reference to FFA has been added for clarity in light of SB 12 requirements. SB 12 also prompted changes relating to Access by Parents. A new section on My Texas Future Admissions Data Sharing has been added to reflect changes in SB 2314. A section on Records Requests Under Education Savings Account Program has been added pursuant to SB 2.

FM(LEGAL) STUDENT ACTIVITIES

A cross-reference to FFAC has been included to ensure clarity around the rules surrounding concussions from SB 2398. Revisions in Parental Notice and Consent are due to SB 12. SB 401 prompted additional information at Participation by Homeschooled Students.

Please note: Information and a survey was emailed to districts in July regarding homeschool student participation in UIL activities. Districts that responded they were opting out of permitting homeschool students to participate in UIL activities received a draft of FD(LOCAL) with that opt-out language; a cross reference to FD(LOCAL) was placed at FM(LOCAL) for those same districts. Please contact your policy consultant if you have questions.

FNA(LEGAL) STUDENT RIGHTS AND RESPONSIBILITIES: STUDENT EXPRESSION

The word "encouraged" has been deleted under Prayer at School Activities pursuant to SB 11. A section on Designated Time for Prayer and Religious Reading has been included in alignment with SB 11.

In response to SB 11, new provisions are included to address the option of a board to adopt a policy designating a time for prayer and reading of the Bible or other religious text. The new law requires the board to take a vote on whether to permit this activity within six months of the legislation's effective date. Since the law was effective on September 1, the board would need to take a vote prior to March 1, 2026.

FNAB(LEGAL) STUDENT EXPRESSION: USE OF SCHOOL FACILITIES FOR NONSCHOOL PURPOSES

A section on Student Clubs has been added pursuant to SB 12.

FNCD(LEGAL) STUDENT CONDUCT: TOBACCO USE AND POSSESSION

Revisions to this code are due to SB 2024.

FNCE(LEGAL) STUDENT CONDUCT: PERSONAL COMMUNICATION DEVICES/ELECTRONIC DEVICES

Extensive revisions throughout are due to HB 1481. In addition, the subtopic for this policy code has been updated from Personal Telecommunications/Electronic Devices to Personal Communication Devices/Electronic Devices.

FNCG(LEGAL) STUDENT CONDUCT: WEAPONS

SB 1596 repealed short-barrel firearms as a prohibited weapon in the Penal Code, so that provision has been deleted.

San Elizario ISD

FNG(LEGAL) STUDENT RIGHTS AND RESPONSIBILITIES: STUDENT AND PARENT COMPLAINTS/GRIEVANCES

A section on Notice to Teacher or Employee has been added pursuant to HB 2. The provisions at Disruption have been removed at this code but remain in BED(LEGAL). All other revisions are due to SB 12.

FNG(LOCAL) STUDENT RIGHTS AND RESPONSIBILITIES: STUDENT AND PARENT COMPLAINTS/GRIEVANCES

Substantial revisions to this student and parent complaint policy are recommended to reflect requirements in SB 12 and other legal requirements reflected in the legal framework at this code.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

FO(LEGAL) STUDENT DISCIPLINE

Requirements relating to discipline for first-time vape offenses and information about parental involvement policies for school disciplinary placements have been added pursuant to HB 6. A section on Determination of Antisemitism has been added due to SB 326. Substantial revisions in the section on Campus Behavior Coordinators and the Parent Involvement Policy are due to HB 6. A section called No Restriction of Recess or Physical Activity has been added pursuant to SB 25. Inclusion of contractors in Videotapes and Recordings is due to SB 12.

FO(LOCAL) STUDENT DISCIPLINE

Minor edits are recommended to the language regarding Video and Audio Monitoring that make such monitoring permissive and clarify what should happen when video and audio recording equipment is in use.

FOA(LEGAL) STUDENT DISCIPLINE: REMOVAL BY TEACHER OR BUS DRIVER

Extensive revisions throughout this legal framework are due to HB 6.

FOB(LEGAL) STUDENT DISCIPLINE: SUSPENSION

Revisions throughout are due to HB 6, including changes regarding both in- and out-of-school suspension, necessitating a change to the policy subtopic name.

FOC(LEGAL) STUDENT DISCIPLINE: PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING

HB 1422 changed the victim age relating to the crime of voyeurism from younger than 14 to younger than 18. All other revisions are pursuant to HB 6.

FOD(LEGAL) STUDENT DISCIPLINE: EXPULSION

The section on Consideration of Virtual Education as Alternative to Expulsion is included pursuant to SB 569. All other revisions are due to HB 6.

FODA(LEGAL) EXPULSION: JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM

A citation adjustment has been made at Court-Ordered Placement after HB 6 repealed Education Code 37.007(d).

San Elizario ISD

FOE(LEGAL) STUDENT DISCIPLINE: EMERGENCY AND ALTERNATIVE PLACEMENT

A subsection called Single Incident has been added under Emergency Placements due to changes from HB 6.

FOF(LEGAL) STUDENT DISCIPLINE: STUDENTS WITH DISABILITIES

HB 6 amended Education Code 37.001(b-1), and a slight revision under ARD Committee Required has been made as a result.

FP(LEGAL) STUDENT FEES, FINES, AND CHARGES

The section on TXVSN has been retitled Hybrid or Virtual Course with language revised in accordance with SB 569. Attorney general guidance regarding Authorized Fees has also been added.

GBA(LEGAL) PUBLIC INFORMATION PROGRAM: ACCESS TO PUBLIC INFORMATION

In the Information That Must Be Disclosed section, a subsection on Personal Services Contract has been added pursuant to HB 3372. A citation at Student Victim Information has been revised based on SB 571. Employee Victims has been amended based on revisions in SB 2601. Language has been added at Cybersecurity Information pursuant to HB 3112. HB 150 Cyber Command revisions prompted language and citation changes in the Texas VIRT Information section. SB 1540 adds election officials to the list of individuals who have the option to restrict access to some personal information. Additional language is included in Board Member and Employee Personnel Information due to SB 370.

GBAA(LEGAL) ACCESS TO PUBLIC INFORMATION: REQUESTS FOR INFORMATION

Changes throughout are due to HB 4219.

GC(LEGAL) PUBLIC NOTICES

A section on Digital Newspaper has been added due to SB 1062.

GF(LEGAL) PUBLIC COMPLAINTS

Revisions throughout are the result of SB 12.

GF(LOCAL) PUBLIC COMPLAINTS

All recommended revisions to this local policy on public complaints stem from the applicable portions of SB 12.

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

GKA(LEGAL) COMMUNITY RELATIONS: CONDUCT ON SCHOOL PREMISES

Additional language at Refusal of Entry or Ejection of Unauthorized Persons has been included pursuant to SB 2929.

GKA(LOCAL) COMMUNITY RELATIONS: CONDUCT ON SCHOOL PREMISES

Language regarding handguns is recommended for revision due to SB 706.

San Elizario ISD

The Legal Tips for Policy Development, available in the Policy Online® Governance and Management Library (TASB login required), describe common legal concerns and best practices specific to this policy's topic.

GNB(LEGAL) **RELATIONS WITH EDUCATIONAL ENTITIES: REGIONAL EDUCATION SERVICE CENTERS**

The revisions relating to special education service group and dyslexia are due to HB 2.

GRAA(LEGAL) **STATE AND LOCAL GOVERNMENTAL AUTHORITIES: LAW ENFORCEMENT AGENCIES**

Citation revisions are due to HB 6 and to correct a formatting issue.

EDUCATIONAL PHILOSOPHY AE
(LEGAL)

Vision Statement and Goals

A board shall adopt a vision statement and comprehensive goals for the district and the superintendent. *Education Code 11.1511(b)(2)*

Public Education Mission, Goals, and Objectives

The mission of the Texas public education system is to ensure that all Texas children have access to a quality education that enables them to achieve their full potential and fully participate now and in the future in the social, economic, and educational opportunities in our state and nation. That mission is grounded on the conviction that a general diffusion of knowledge is essential for the welfare of Texas and for the preservation of the liberties and rights of Texas citizens. It is further grounded on the conviction that a successful public education system is directly related to a strong, dedicated, and supportive family and that parental involvement in the school is essential for the maximum educational achievement of a child.

Objectives

The objectives of public education are:

Objective 1: Parents will be full partners with educators in the education of their children.

Objective 2: Students will be encouraged and challenged to meet their full educational potential.

Objective 3: Through enhanced dropout prevention efforts, all students will remain in school until they obtain a diploma.

Objective 4: A well-balanced and appropriate curriculum will be provided to all students. Through that curriculum, students will be prepared to succeed in a variety of postsecondary activities, including employment and enrollment in institutions of higher education.

Objective 5: Educators shall cultivate in students an informed American patriotism and lead students in a close study of the founding documents of the United States and Texas. The purpose of this objective is to:

1. Increase students' knowledge of the deepest and noblest purposes of the United States and Texas;
2. Enhance students' intellectual independence so that students may become thoughtful, informed citizens who have an appreciation for the fundamental democratic principles of our state and national heritage; and
3. Guide students toward understanding and productively functioning in a free enterprise society.

Objective 6: Qualified and highly effective personnel will be recruited, developed, and retained.

Objective 7: Texas students will demonstrate exemplary performance in comparison to national and international standards.

Objective 8: School campuses will maintain a safe and disciplined environment conducive to student learning.

Objective 9: Educators will keep abreast of the development of creative and innovative techniques in instruction and administration using those techniques as appropriate to improve student learning.

Objective 10: Technology will be implemented and used to increase the effectiveness of student learning, instructional management, staff development, and administration.

Objective 11: The State Board of Education, TEA, and the commissioner shall assist school districts and charter schools in providing career and technology education to students.

Goals

The academic goals of public education are to serve as a foundation for a well-balanced and appropriate education.

Goal 1: The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language.

Goal 2: The students in the public education system will demonstrate exemplary performance in the understanding of mathematics.

Goal 3: The students in the public education system will demonstrate exemplary performance in the understanding of science.

Goal 4: The students in the public education system will demonstrate exemplary performance in the understanding of social studies.

Goal 5: The students who graduate high school in the public education system will have the skills and credentials necessary to immediately enter this state's workforce.

Goal 6: The students who graduate high school in the public education system and who elect to pursue postsecondary education will be ready for postsecondary coursework without the need for remediation.

Education Code 4.001, .002

Definitions

“District-level committee” means the committee established under Education Code 11.251, or a comparable committee if the district is exempted (or has exempted itself) from this provision.

“Innovation plan committee” means a committee appointed by the board of trustees to develop the innovation plan in accordance with statutory requirements. The district-level committee may also serve in this role.

“Public hearing” means an open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation and provides the opportunity for the public to give opinions and comments on the proposed actions.

“Public meeting” means an open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation.

“Unacceptable academic performance rating” means a rating of Improvement Required or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual.

“Unacceptable financial accountability rating” means a Financial Integrity Rating System of Texas (FIRST) rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual.

19 TAC 102.1301

District of Innovation

A district is eligible for designation as a district of innovation if the district's final and most recent performance rating under Education Code 39.054 reflects at least acceptable performance.

A board may not vote on the final approval of the innovation plan if the district is assigned either a final or preliminary rating below acceptable performance. In the event the preliminary rating is changed, the board may then vote to become an innovation district.

Consideration of designation as a district of innovation may be initiated by a resolution adopted by the board or a petition signed by a majority of the members of the district-level committee [see BQA].

Education Code 12A.001; 19 TAC 102.1303

Public Hearing

After adopting a resolution or receiving a petition for consideration as a district of innovation, a board shall hold a public hearing as soon as possible, but not later than 30 days, to consider whether the district should develop a local innovation plan for the designation of the district as a district of innovation.

At the conclusion of the public hearing or within 30 days after conclusion of the public hearing, the board may decline to pursue designation of the district as a district of innovation or appoint a committee to develop a local innovation plan.

The board may outline the parameters around which the innovation plan committee may develop the plan.

Education Code 12A.002; 19 TAC 102.1305

Local Innovation Plan

A local innovation plan meeting all legal requirements must be developed for a district before the district may be designated as a district of innovation.

The local innovation plan must provide for a comprehensive educational program for the district, which program may include:

1. Innovative curriculum, instructional methods, and provisions regarding community participation, campus governance, and parental involvement;
2. Modifications to the school day or year [see EB, EC];
3. Provisions regarding the district budget and sustainable program funding;
4. Accountability and assessment measures that exceed the requirements of state and federal law; and
5. Any other innovations prescribed by the board of trustees.

The plan must also identify requirements imposed by the Education Code that inhibit the goals of the plan and from which the district should be exempted on adoption of the plan, subject to Education Code 12A.004.

The commissioner of education shall maintain a list of provisions from which designated districts of innovation are exempt. The commissioner shall notify the legislature of each provision from which districts enrolling a majority of students in this state are exempt.

Education Code 12A.003, .004(b); 19 TAC 102.1305(d)

Prohibited Exemptions

A local innovation plan may not provide for the exemption of a district designated as a district of innovation from the provisions listed in Education Code 12A.004 and 19 Administrative Code 102.1309.
Education Code 12A.004; 19 TAC 102.1309

An innovation district may not be exempted from the following sections of the Education Code and the rules adopted thereunder:

1. A state or federal requirement, imposed by statute or rule, applicable to an open-enrollment charter school operating under Education Code Chapter 12, Subchapter D, including, but not limited to, the requirements listed in Education Code 12.104(b), and:
    a. Education Code Chapter 22, Subchapter B;
    b. Education Code Chapter 25, Subchapter A, sections 25.001, .002, .0021, .0031, and .004;
    c. Education Code Chapter 28, sections 28.002, .0021, .0023, .004, .005, .0051, .006, .016, .0211, .0213, .0217, .025, .0254, .02541, .0255, .0258, .0259, and .026;
    d. Education Code Chapter 29, Subchapter G;
    e. Education Code Chapter 30, Subchapter A;
    f. Education Code 30.104;
    g. Education Code Chapter 34;
    h. Education Code Chapter 39; and
    i. Education Code Chapter 39A.
2. Education Code Chapter 11, Subchapters A, C, D, and E, except that a district may be exempt from Education Code 11.1511(b)(5) and (14) and 11.162;
3. Education Code Chapter 12, Subchapter C;
4. Education Code Chapter 12A;
5. Education Code Chapter 13;
6. Education Code 21.0032;
7. Education Code 21.057;
8. Education Code Chapter 37;
9. Education Code Chapter 44, sections 44.0011, .002, .003, .004, .0041, .005, .0051, .006, .007, .0071, .008, .009, .011, .0312, .032, .051, .052, .053, and .054;
10. Education Code Chapter 45, sections 45.003, .0031, .005, .105, .106, .202, and .203;
11. Education Code Chapter 46;
12. Education Code Chapter 48; and
13. Education Code Chapter 49.

In addition to the prohibited exemptions specified above, an innovation district may not be exempted from:

1. A requirement of a grant or other state program in which the district voluntarily participates;
2. Duties that the statute applies to the execution of that power if a district chooses to implement an authorized power that is optional under the terms of the statute;
3. A requirement of a grant or other state program authorized in the Education Code that would otherwise entitle the district to participation in that program; and
4. Requirements imposed by provisions outside the Education Code, including requirements under Government Code Chapter 822.

19 TAC 102.1309; Education Code 12A.004, 21.057(f)

Adoption of Local Innovation Plan

The board may not vote on adoption of a proposed local innovation plan unless:

1. The final version of the proposed plan has been available on the district's website for at least 30 days;
2. The board has notified the commissioner of the board's intention to vote on adoption of the proposed plan; and
3. The district-level committee [see BQA] has held a public meeting to consider the final version of the proposed plan and has approved the plan by a majority vote of the committee members. The public meeting may occur at any time, including up to or on the same date at which the board intends to vote on final adoption of the proposed plan.

The board may adopt a proposed local innovation plan by an affirmative vote of two-thirds of the membership of the board.

On adoption of a local innovation plan, the district is designated as a district of innovation for the term specified in the plan, but no longer than five calendar years, and shall begin operation in accordance with the plan. In addition, the district is exempt from state requirements identified under Education Code 12A.003(b)(2). [See Local Innovation Plan, above]

The district shall notify the commissioner of approval of the plan along with a list of approved exemptions by completing the agency’s form provided at 19 Administrative Code 102.1307(d).

A district's exemption under the plan includes any subsequent amendment or redesignation of an identified state requirement, un-

less the subsequent amendment or redesignation specifically applies to an innovation district.

The district shall ensure that a copy of the plan is posted on the district's website in accordance with Education Code 12A.0071, for the term of the designation as an innovation district.

Education Code 12A.005; 19 TAC 102.1307

Notice to TEA

Not later than the 15th day after the date on which the board finalizes a local innovation plan either through adoption, amendment, or renewal, the district shall provide a link to the local innovation plan as posted on the district's website to the Texas Education Agency (TEA). TEA shall promptly post the current local innovation plan on the agency's website. *19 TAC 102.1307(g); Education Code 12A.0071(b)*

Term

The term of a district's designation as a district of innovation may not exceed five years and is effective upon district approval and notification of the plan to the TEA. A district may only have one innovation plan at any given time. *Education Code 12A.006; 19 TAC 102.1311*

Amendment, Rescission, or Renewal of Local Innovation Plan

A local innovation plan may be amended, rescinded, or renewed if the action is approved by a vote of the district-level committee [see BQA] and a two-thirds majority vote of the board.

An amendment to an approved plan does not change the date of the term of designation as an innovation district. Exemptions that were already formally approved are not required to be reviewed.

A district must notify TEA within five business days of rescission and provide a date at which time it will be in compliance with all sections of the Education Code, but no later than the start of the following school year.

During renewal, all sections of the plan and exemptions shall be reviewed, and the district must follow all components outlined in 19 Administrative Code 102.1307 relating to Adoption of Local Innovation Plans, except that a district is not required to notify the commissioner of the board's intention to vote on the adoption of the proposed plan.

The district shall notify the commissioner of any actions taken along with the associated exemptions and local approval dates.

A district must meet eligibility requirements under 19 Administrative Code 102.1303 in order to renew an innovation plan.

Education Code 12A.007; 19 TAC 102.1313

Renewal Timeline

In the event that a district fails to renew a plan prior to the expiration of its term, a district may renew the plan in the six months subsequent to the plan's date of expiration in order to maintain a continuous designation as a district of innovation.

The term of a renewed plan, subject to 19 Administrative Code 102.1311, may not begin prior to the date on which the board votes to adopt the renewed plan, unless the plan is adopted during the six months subsequent to the plan's date of expiration.

If a plan is renewed during the timeline described in this provision, the renewed plan will have a term not to exceed five calendar years, beginning on the date of expiration of the prior term.

If a plan is renewed during the timeline described in this provision and changes are made to the plan during the renewal process, those changes will be in effect from the date of adoption of the renewed plan through the expiration date of the renewed plan, unless amended, rescinded, or terminated.

If changes are made to the plan during the renewal process, the district shall mark the changes with the date of the vote to renew the plan in order to denote the earliest date those changes may take effect.

A district whose plan is not renewed during the timeline described in this provision shall comply with all previously adopted exemptions immediately upon expiration of the plan and begin the adoption process over again in its entirety should the district wish to pursue designation as a district of innovation in the future.

19 TAC 102.1313(a)(3)(B)

Website Posting

A district designated as a district of innovation shall ensure that a copy of the district's current local innovation plan is available to the public by posting and maintaining the plan in a prominent location on the district's internet website. *Education Code 12A.0071(a); 19 TAC 102.1307(f)*

The district's innovation plan must be clearly posted on the district's website for the term of the designation as an innovation district. *19 TAC 102.1307(f)*

Criminal History Background Checks

A prohibition, restriction, or requirement imposed by Education Code Chapter 22, Subchapter C (district employee and volunteer criminal history records), applies to the same extent to a district of innovation or other charter entity.

The failure of a district of innovation to provide information required under Education Code 22.0832 (National Criminal History Record

Information Review of Certain Open-Enrollment Charter School Employees) may result in termination of the district's designation as a district of innovation.

Education Code 22.0815(b)-(c)

Termination by Commissioner

Discretionary Termination

The commissioner may terminate a district's designation as a district of innovation if the district receives for two consecutive school years:

1. A final unacceptable academic performance rating under Education Code 39.054;
2. A final unacceptable financial accountability rating under Education Code 39.082; or
3. A final unacceptable academic performance rating under Education Code 39.054 for one of the school years and an unacceptable financial accountability rating under Education Code 39.082 for the other school year.

The commissioner may permit the district to amend the local innovation plan to address concerns specified by the commissioner in lieu of terminating the district's designation.

Education Code 12A.008(a)-(b); 19 TAC 102.1315(a)(1)-(a)(2)

The commissioner may terminate a district's designation as a district of innovation if the district fails to comply with the duty to discharge or refuse to hire:

1. Certain employees or applicants for employment under Education Code 12.1059;
2. Certain employees or applicants convicted of certain offenses under Education Code 22A.157; or
3. Certain employees or applicants not eligible for employment or to act as a service provider in educational entities under Education Code 22A.151.

19 TAC 102.1315(a)(3); Education Code 12A.008(b-1) [See DBAA, DF]

Mandatory Termination

The commissioner shall terminate a district's designation as a district of innovation if the district receives for three consecutive school years:

1. A final unacceptable academic performance rating under Education Code 39.054;

2. A final unacceptable financial accountability rating under Education Code 39.082; or

3. Any combination of one or more unacceptable ratings Education Code 39.054 and one or more unacceptable ratings under Education Code 39.082.

Education Code 12A.008(c); 19 TAC 102.1315(b)

No Appeal — The commissioner's decision to terminate a district's designation as a district of innovation is final and may not be appealed. *Education Code 12A.008(d); 19 TAC 102.1315(d)*

A district may choose to operate under a home-rule charter. Adoption of a home-rule charter does not affect:

1. The district's boundaries.
2. Taxes or bonds of the district authorized before the effective date of the charter.

Education Code 12.0011, .011

Powers of Home-Rule District

A home-rule district has the powers and entitlements granted to school districts and school district boards, including taxing authority. A home-rule district is subject to federal and state laws and rules governing school districts except:

1. A home-rule district is subject to the Education Code only to the extent a provision of the Education Code specifically provides for the applicability to a home-rule district;
2. A home-rule district is subject to a rule adopted by the State Board of Education (SBOE) or the commissioner of education only if the code provision authorizing the rule specifically applies to a home-rule district; and
3. A home-rule district is subject to all requirements of federal law and applicable court orders relating to eligibility for and the provision of special education and bilingual programs.

Nondiscrimination

The above statements do not permit a home-rule district to discriminate against a student who has been diagnosed as having a learning disability, including dyslexia or attention deficit/hyperactivity disorder. Prohibited discrimination includes denial of placement in a gifted and talented program if the student would otherwise be qualified for the program but for the student's learning disability.

The above statements do not permit a home-rule district to, on the basis of race, socioeconomic status, learning disability, or family support status, place a student in a program other than the highest level program necessary to ensure the student's success.

Education Code 12.012(a), (c)

Charter Commission

A board shall appoint a charter commission to frame a home-rule school district charter if:

1. The board receives a petition requesting the appointment of a charter commission signed by at least five percent of the district's registered voters; or
2. At least two-thirds of the total membership of the board adopts a resolution ordering the appointment of a charter commission.

The board must appoint the commission by the 30th day after receipt of the petition or adoption of the resolution.

The commission must complete the proposed charter not later than the first anniversary of the date of the commission's appointment. After that date, the commission expires and the appointment of the commission is void.

Education Code 12.014, .015(a), (c)

Membership

The charter commission shall consist of 15 district residents. The membership must reflect the racial, ethnic, socioeconomic, and geographic diversity of a district. A majority of the commission members must be parents of school-age children attending public school. At least 25 percent of the commission must be classroom teachers selected by representatives of the professional staff as provided by the planning process under Education Code 11.251(e). [See BQ series] *Education Code 12.015(a)–(b)*

Governmental Body

The charter commission is considered a governmental body for purposes of Government Code Chapters 551 (Open Meetings Act) and 552 (Public Information Act). *Education Code 12.015(d)*

Content of Home-Rule Charter

The home-rule charter must:

1. Describe the educational program to be offered.
2. Provide that continuation of the charter is contingent on:
    a. Acceptable student performance on assessment instruments.
    b. Compliance with other applicable accountability provisions.
3. Specify any basis, in addition to a basis specified at Education Code Chapter 11, Subchapter B, on which the charter may be placed on probation or revoked.
4. Describe the governing structure of the district and campuses.
5. Specify any procedure or requirement, in addition to those at Education Code Chapter 38 [see FF series], the district will follow to ensure the health and safety of students and employees.
6. Describe the process by which the district will adopt an annual budget, including the use of program-weight funds.
7. Describe how the annual audit of the district's financial and programmatic operations will be conducted, including how the district will provide the necessary information to participate in

the Public Education Information Management System (PEIMS).

8. Include any other provision the charter commission considers necessary.

Education Code 12.016

Review by Commissioner of Education

The charter commission shall submit the proposed charter to the commissioner of education. The commissioner shall review the charter for compliance with applicable laws and recommend any necessary modifications. If the commissioner does not act within 30 days after the date the commissioner receives the proposed charter, the charter is approved. *Education Code 12.018*

Charter Elections

As soon as practicable after the commissioner approves the charter, a board shall order an election on the proposed charter. The election shall be held on the first uniform election date that occurs at least 45 days after the date the board orders the election.

At least three copies of the proposed charter must be available in the office at each school campus and at the district's central administrative office between the date of the election order and election day. Notice of the election must include a statement of where and how copies may be obtained or viewed. A summary of the proposed charter shall be attached to each copy. The summary shall also be made available to district employees, parents, community members, and the media.

The ballot shall be written to permit voting for or against the proposition: "Whether the (name of district) shall be governed under the home-rule district charter, which is proposed by a charter commission appointed by the board and under which only certain laws and rules apply to the district."

Education Code 12.019

Minimum Voter Turnout

An election on the adoption of a proposed home-rule charter has no effect unless at least 25 percent of the registered voters of the district vote in the election.

If the required number of voters does not vote in the election, the board shall order another election to be held on the first uniform election date:

1. That occurs at least 45 days after the election is ordered, and
2. On which one or more elections are to be held, the combination of which covers all the territory of the district.

If the required number of voters does not vote in the election, a board may continue to order elections until the required minimum is achieved.

Education Code 12.022

Charter Amendments

A home-rule charter may be amended pursuant to Education Code 12.020 and .022(b).

Adoption of Charter or Amendment

Subject to Education Code 12.022 (minimum voter turnout), the proposed charter or amendment is adopted if approved by a majority of the qualified voters of the district voting in the election. The charter or amendment shall specify an effective date and takes effect according to its terms when the board enters an order declaring the charter or amendment adopted. The board shall enter the order not later than the 10th day after the date the canvass of the election returns is completed.

As soon as practicable after a district adopts the charter or amendment, the board shall notify the commissioner of the outcome of the election.

Education Code 12.021

Certification of Charter

As soon as practicable after the charter or amendment is adopted, the board president shall certify to the secretary of state a copy of the charter or amendment showing voter approval. The secretary of state shall file and record the certification. A recorded charter or amendment is a public act. A court shall take judicial notice of a recorded charter or amendment and proof is not required of its provisions. *Education Code 12.023, .024*

Governance of Home-Rule District

A home-rule district may adopt and operate under any governing structure. The home-rule district may create offices, determine the time and method for selecting officers, and prescribe the qualifications and duties of officers. The term of any officer shall be three or four years, as determined under Education Code 11.059. *Education Code 12.025*

Change in Governing Body

If the adoption, amendment, or revocation of a home-rule school district charter changes the structure of the board, the members serving on the date the adoption, amendment, or revocation takes effect shall continue in office until their successors have been chosen and have qualified for office. *Education Code 12.026*

Requirements Under Education Code

A home-rule district is subject to:

1. Provisions of the Education Code establishing a criminal offense.

2. Provisions of the Education Code relating to limitations on liability.

3. Prohibitions, restrictions, or requirements relating to:

   a. PEIMS, as determined by the commissioner.

   b. Educator certification under Education Code Chapter 21 and educator rights under Education Code 21.407, .408, and 22.001. [See CFEA, DGA]

   c. Criminal history records under Education Code Chapter 22, Subchapter C. [See DBAA]

   d. Student admissions under Education Code 25.001. [See FD]

   e. School attendance under Education Code 25.085–.087. [See FEA]

   f. Interdistrict transfers under Education Code Chapter 25, Subchapter B. [See FDA]

   g. Elementary class-size limits, in the case of any campus that fails to satisfy any standard under Education Code 39.054(e). [See EEB]

   h. High school graduation under Education Code 28.025. [See EIF]

   i. Special education programs under Education Code Chapter 29, Subchapter A. [See EHBA series]

   j. Bilingual education under Education Code Chapter 29, Subchapter B. [See EHBE]

   k. Prekindergarten programs under Education Code Chapter 29, Subchapter E. [See EEL, EHBG]

   l. Safety provisions relating to the transportation of students under Education Code 34.002–.004 and .008. [See CNA, CNB, CNC]

   m. Computation and distribution of state aid under Education Code Chapters 31, 43, and 48.

   n. Extracurricular activities under Education Code 33.081. [See FM]

   o. Health and safety under Education Code Chapter 38. [See FF series]

p. The provisions of Education Code Chapter 39, Subchapter A. [See AIC]

q. Public school accountability and special investigations under Education Code Chapter 39, Subchapters A, B, C, D, and J, and Chapter 39A. [See AI series]

r. Options for local revenue levels in excess of entitlement under Education Code Chapter 49.

s. Bonds or other obligations or tax rates under Education Code Chapters 43, 45, and 48.

t. Purchasing under Education Code Chapter 44. [See CH]

u. Parental options to retain a student under Education Code 28.02124. [See EIE]

Education Code 12.013(b)

Employees of Home-Rule Districts

An employee who qualifies for membership in the Teacher Retirement System shall be covered in the same manner and to the same extent as a qualified employee employed by an independent school district. *Education Code 12.012(b)*

Rescission of Charter

A board shall order an election on the question of rescinding the home-rule school district charter if:

1. The board receives a petition requesting a rescission election signed by at least five percent of the registered voters of the district; or

2. At least two-thirds of the board adopts a resolution ordering the election.

Rescission of a home-rule charter does not affect:

1. District boundaries.

2. Taxes or bonds of the district authorized before the effective date of the rescission.

Education Code 12.030(b), (h)

Probation or Revocation of Charter

The SBOE may place a home-rule charter on probation or revoke the charter. *Education Code 12.027, .028; 19 TAC 100.201*

Material Violation

A home-rule district commits a material violation of the district's charter if the district fails to comply with the duty to discharge or refuse to hire, or terminate or refuse to accept services from, certain employees, applicants for employment, or service providers

under Education Code 22A.151 or 22A.157, as applicable. *Education Code 12.0271* [See DBAA]

Status of District in Case of Annexation or Consolidation

If a district is annexed to another district under Education Code Chapter 13, and only one of the districts is a home-rule district, the status of the receiving district shall be the status of both districts following annexation. The petition under Education Code 13.003 must state the status for the consolidated district. *Education Code 12.029*

Accreditation

Each district must be accredited by Texas Education Agency (TEA). A district that is not accredited may not receive funds from TEA or hold itself out as operating a public school of this state. *Education Code 11.001, 39.052(f)*

District accreditation is determined in accordance with Education Code Chapter 39, Subchapter C and rules adopted by the commissioner of education at 19 Administrative Code, Chapter 97, Subchapter EE (Accreditation Status, Standards, and Sanctions). *Education Code 39.051*

Statuses

The commissioner shall determine criteria for the following accreditation statuses:

1. Accredited. Accredited means TEA recognizes the district as a public school of this state that meets the standards determined by the commissioner under Education Code 39.052(b) and (c), and specified in 19 Administrative Code 97.1059; and is not currently assigned an accreditation status of Accredited-Warned or Accredited-Probation;

2. Accredited-Warned. Accredited-Warned means the district exhibits deficiencies in performance, as specified in 19 Administrative Code 97.1055(b), that, if not addressed, will lead to probation or revocation of its accreditation status;

3. Accredited-Probation. Accredited-Probation means the district exhibits deficiencies in performance, as specified in 19 Administrative Code 97.1055(c), that must be addressed to avoid revocation of its accreditation status; and

4. Not Accredited-Revoked. Not Accredited-Revoked means TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under Education Code 39.052(b) and (c), and specified in 19 Administrative Code 97.1055(d).

Education Code 39.051; 19 TAC 97.1055(a)(1)

Annual Evaluation

Each year, the commissioner shall determine the accreditation status of each district. In determining the accreditation status of a district, the commissioner:

1. Shall evaluate and consider performance:

    a. On achievement indicators under Education Code 39.053 [see Performance Indicators, below]; and

b. Under the financial accountability rating system developed under Education Code, Chapter 39, Subchapter D [see CFA].

2. May evaluate and consider:

a. The district's compliance with statutory requirements and requirements imposed by rule of the commissioner or State Board of Education that relate to:

(1) Reporting data through the Public Education Information Management System (PEIMS) or other reports required by state or federal law or court order;

(2) High school graduation requirements; or

(3) Extracurricular activities, student health and safety, purchasing, elementary class size limits, removal of a disruptive student from the classroom, at-risk programs, and prekindergarten programs;

b. The effectiveness of the district's programs for special populations; and

c. The effectiveness of the district's career and technology program.

Based on a district's performance, the commissioner shall assign each district an accreditation status or revoke the accreditation of the district and order closure of the district.

A district's accreditation status may be raised or lowered based on the district's performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required by Education Code Chapter 39, Subchapter C.

Education Code 7.056(e)(3)(C)-(I), 39.052; 19 TAC 97.1055

For additional information on the commissioner process for assigning accreditation status, see 19 Administrative Code 97.1055.

Notice of Status

The commissioner shall notify a district if the district has received an accreditation status of accredited-warned or accredited-probation, or a campus's performance is below standard. *Education Code 39.052(e)*

To Parents and Property Owners

A district assigned an accreditation status of accredited-warned, accredited-probation, or not accredited-revoked shall notify the parents of students enrolled in the district and property owners in the district as specified in 19 Administrative Code 97.1055. The district's notice must contain information about the accreditation status, the implications of such status, and the steps the district is tak-

ing to address the areas of deficiency identified by the commissioner. The district's notice shall use the format and language determined by the commissioner.

The district's notice must:

1. Not later than 30 calendar days after the accreditation status is assigned, appear on the home page of the district's website, with a link to the required notification, and remain until the district is assigned the accredited status; and

2. Appear in a newspaper of general circulation, as defined in 19 Administrative Code 97.1051 (Definitions), in the district for three consecutive days as follows:

   a. From Sunday through Tuesday of the second week following assignment of the status; or

   b. If the newspaper is not published from Sunday through Tuesday, then for three consecutive issues of the newspaper beginning the second week following assignment of the status; or

3. Not later than 30 calendar days after the status is assigned, be sent by first class mail addressed individually to each parent of a student enrolled in the district and each property owner in the district; or

4. Not later than 30 calendar days after the status is assigned, be presented as a discussion item in a public meeting of the board of trustees conducted at a time and location that allows parents of students enrolled in the district and property owners in the district to attend and provide public comment.

To TEA

A district required to act under this subsection shall send the following to TEA via certified mail, return receipt requested:

1. The universal resource locator (URL) for the link to the notification required above; and

2. Copies of the notice in the newspaper showing dates of publication, or a paid invoice showing the notice content and its dates of publication; or

3. Copies of the notice sent by mail and copies of all mailing lists and postage receipts; or

4. Copies of the notice presented at a public meeting and copies of the board of trustees meeting notice and minutes for the

board meeting in which the notice was presented and publicly discussed.

19 TAC 97.1055(f)

Performance Indicators

The commissioner shall adopt a set of indicators of the quality of learning and achievement, including three domains of achievement indicators. [See Achievement Indicators, below] *Education Code 39.053(a)*

The indicators must measure and evaluate districts and campuses with respect to:

1. Improving student preparedness for success in subsequent grade levels and entering the workforce, the military, or post-secondary education;
2. Reducing, with the goal of eliminating, student academic achievement differentials among students from different racial and ethnic groups and socioeconomic backgrounds; and
3. Informing parents and the community regarding campus and district performance.

Education Code 39.053(a-1)

Achievement Indicators

Districts and campuses must be evaluated based on indicators of achievement grouped in three domains:

1. Student achievement domain;
2. School progress domain; and
3. Closing the gaps domain.

Education Code 39.053(c)

Performance on the achievement indicators in the three domains shall be compared to state-established standards. The indicators must be based on information that is disaggregated by race, ethnicity, and socioeconomic status. *Education Code 39.053(b)*

Each school district shall submit the data required for the indicators to the commissioner. *Education Code 39.053(i)*

A-F Performance Ratings

Except when the commissioner determines the assignment of an overall performance rating would be inappropriate [see Assignment of Not Rated, below], the commissioner shall adopt rules to evaluate district and campus performance and assign each district and campus an overall performance rating of A, B, C, D, or F.

In addition to the overall performance rating, the commissioner shall assign each district and campus a separate domain perfor-

mance rating of A, B, C, D, or F for each domain under Education Code 39.053(c) [see Achievement Indicators, above].

An overall or domain performance rating of:

1. A reflects exemplary performance.
2. B reflects recognized performance.
3. C reflects acceptable performance.
4. D reflects performance that needs improvement.
5. F reflects unacceptable performance.

A district may not receive an overall or domain performance rating of A if the district includes any campus with a corresponding overall or domain performance rating of D or F.

For purposes of assigning districts and campuses an overall and a domain performance rating, the commissioner shall ensure that the method used to evaluate performance is implemented in a manner that provides the mathematical possibility that all districts and campuses receive an A rating.

Not later than August 15 of each year, the following information shall be made publicly available as provided by rules adopted by the commissioner:

1. The performance ratings for each district and campus; and
2. If applicable, the number of consecutive school years of unacceptable performance ratings for each district and campus.

Education Code 39.054(a), (a-3), (b)

Assignment of Not Rated

Notwithstanding any other law, the commissioner may assign a district or campus an overall performance rating of “Not Rated” if the commissioner determines that the assignment of a performance rating of A, B, C, D, or F would be inappropriate because:

1. The district or campus is located in an area that is subject to a declaration of a state of disaster under Government Code Chapter 418 and due to the disaster, performance indicators for the district or campus are difficult to measure or evaluate and would not accurately reflect quality of learning and achievement for the district or campus;
2. The district or campus has experienced breaches or other failures in data integrity to the extent that accurate analysis of data regarding performance indicators is not possible;

3. The number of students enrolled in the district or campus is insufficient to accurately evaluate the performance of the district or campus; or

4. For other reasons outside the control of the district or campus, the performance indicators would not accurately reflect quality of learning and achievement for the district or campus.

Education Code 39.054(a-4)

Calculating Consecutive Years

Notwithstanding any other law, an overall performance rating of "Not Rated" is not included in calculating consecutive school years of unacceptable performance ratings and is not considered a break in consecutive school years of unacceptable performance ratings for purposes of any provision of the Education Code. *Education Code 39.054(a-5)*

Acceptable Performance

A reference in law to an acceptable performance rating or acceptable performance includes an overall or domain performance rating of A, B, or C or performance that is exemplary, recognized, or acceptable. A reference in law to an unacceptable performance rating or unacceptable performance includes an overall or domain performance rating of F. For the purposes of public reporting requirements, an overall or domain performance rating of D shall be referred to as performance that needs improvement. *Education Code 39.0543(a)*

D Rating

A reference in law to an acceptable performance rating or acceptable performance for a district or campus includes an overall performance rating of D if, since previously receiving an overall performance rating of C or higher, the district or campus has not previously received more than one overall performance rating of D or has not received an overall performance rating of F. *Education Code 39.0543(b)*

Appeal and Revision

The process and timeline by which a district or campus may appeal ratings are based upon the requirements described in the *Accountability Ratings Appeals Process and Timeline* adopted under 19 Administrative Code 97.1002 and apply to all accountability rating appeals from 2023 and beyond until otherwise updated. The calendar dates for the accountability year will be announced in conjunction with the release of preliminary accountability ratings. *19 TAC 97.1002(b)*

Ratings may be revised as a result of investigative activities by the commissioner as authorized under Education Code 39.003. *19 TAC 97.1002(c)*

Local Accountability System

The local accountability system standards established by the commissioner under Education Code 39.0544 shall be used by districts to develop a plan to locally evaluate the performance of their campuses. *19 TAC 97.1003(a)*

Local Accountability Plan

A local accountability plan created by a district must include domain performance ratings assigned by the commissioner under Education Code 39.054, and performance ratings based on locally developed domains or sets of accountability measures. *19 TAC 97.1003(b)*

A district must create its local accountability plan based on school type. The four school types are elementary school, middle school, high school, and kindergarten-grade 12. The plan must include all campuses within a school type. The district may also request to identify an additional school group within a school type for which to customize its local accountability plan. Otherwise, all campuses within a school type must be evaluated on a common set of components determined by the district. A district may also request to identify a campus rated under alternative education accountability provisions as a unique school type. *19 TAC 97.1003(b)(4)*

Plan Components

A locally developed domain or set of accountability measures is referred to as a plan component. Plan components must describe each item and the reason for its inclusion in the plan. A district must assign each component to one of the following five domains: academics, culture and climate, extra- and co-curricular, future-ready learning, and locally determined. The weight of all plan components must equal 100 percent. *19 TAC 97.1003(b)(1)*

A district may assign weights to each plan component, as determined by the district, provided that the plan components must in the aggregate account for no more than 50 percent of the combined overall performance rating. A local accountability plan may include no fewer than two and no more than 10 components weighted between 5 percent and 60 percent. *19 TAC 97.1003(c)*

Each plan component must contain levels of performance that allow for differentiation, with assigned standards for achieving the differentiated levels that are aligned to a letter grade of A, B, C, D, or F and meet the requirements of 19 Administrative Code 97.1003(d)(1)-(3). *19 TAC 97.1003(d)*

Each plan component measure must meet standards for reliability and validity as required by 19 Administrative Code 97.1003(e)(1)-(3). *19 TAC 97.1003(e)*

Campuses without STAAR or State Ratings

For the purposes of assigning state accountability ratings, a campus that does not serve any grade level for which a State of Texas Assessments of Academic Readiness (STAAR) examination is administered is paired with a campus in its district that serves grade levels for which STAAR examinations are administered.

A campus not rated under the state accountability system is not eligible to combine state and local ratings. Local accountability data for a campus without state ratings may be displayed on TEA, district, and campus websites but will not be combined with state accountability data. The state accountability manual adopted under 19 Administrative Code 97.1001 (Accountability Rating System) provides information about campus ratings and eligibility for applicable years.

19 TAC 97.1003(b)(3)

Campus Performance Ratings

A district authorized to assign campus performance ratings shall evaluate the performance of each campus and assign each campus a performance rating of A, B, C, D, or F for overall performance and for each locally developed domain or set of accountability measures. Not later than a date established by the commissioner, the district shall:

1. Report the performance ratings to the agency; and
2. Make the performance ratings available to the public as provided by commissioner rule.

Education Code 39.0544(e)

Each campus with an approved district plan is eligible to receive a local accountability rating. A campus with an overall state accountability rating of C or higher based on ratings derived from student performance at the campus is eligible to combine an overall local accountability rating with the overall state accountability rating to determine the combined rating. *19 TAC 97.1003(b)(2); Education Code 39.054(a)*

Submission and Audit Standards

Calculations for each plan component and overall performance ratings must be capable of being audited by a third party.

A district must use a one-to-one correspondence when converting campus grades based on plan component measures to a standard scale of 30-100 where A=90-100, B=80-89, C=70-79, D=60-69, and F=30-59.

Categorical data, or data not on a continuous scale, must be converted to the standard scale of A=90-100, B=80-89, C=70-79, D=60-69, and F=30-59 by assigning the maximum value for each

scaled score interval with the corresponding category used in the campus rating scale.

A district is required to submit a local accountability plan that includes components, domains, and overall scaled scores and ratings to TEA on a timeline determined by the commissioner. The timeline will be published on the TEA website.

All scaled scores and letter grades submitted by a school district are subject to audit. Any data discrepancies or any indication that data have been compromised may result in verification and audit of district and campus data used to assign local accountability ratings. The audit process may include requests for data used for campus-level calculation of component and domain scaled scores.

On an annual basis, TEA will randomly select districts for local accountability audits, and, for each such audit, TEA will randomly select components for review. Selected districts must submit the requested data for review within the timeframe specified. A district must maintain documentation of its local accountability plan, along with all associated data used to assign campus ratings, for two years after the end of the plan implementation period.

Responsibility for the accuracy and quality of data used to determine local accountability ratings rests with each district. Superintendent certification of data accuracy during the ratings submission process shall include an assurance that calculations have been verified to ensure that all data were included as appropriate for all components.

19 TAC 97.1003(f)(1)-(6)

Scorecard and Website

A district must produce a campus scorecard and make available on the district website an explanation of the methodology used to assign local accountability performance ratings. The campus scorecard shall include, at a minimum, the scaled score and rating for each component and domain along with the overall rating. A link to the local accountability ratings posted by the district must be provided to TEA and may be included on the agency-developed school report card. *19 TAC 97.1003(g)*

Appeal and Revision

An appeal of a local accountability rating may be submitted by the superintendent once ratings are released. The local accountability appeals timeline follows the appeal deadline dates and processes as described in the state accountability manual adopted under 19 Administrative Code 97.1001 of this title for the applicable year. *19 TAC 97.1003(f)(7)*

Ratings may be revised as a result of investigative activities by the commissioner as authorized under Education Code 39.057(d) and (e) (redesignated to Education Code 39.003). *19 TAC 97.1003(h)*

Distinction Designations for Outstanding Performance

The commissioner shall award distinction designations for outstanding performance. A distinction designation awarded to a district or campus shall be referenced directly in connection with the performance rating assigned to the district or campus and made publicly available together with the A-F performance ratings.

A district or campus may not be awarded a distinction designation unless the district or campus has acceptable performance under the A-F performance ratings.

Education Code 39.201

Academic Distinction

The commissioner shall establish an academic distinction designation for districts and campuses for outstanding performance in attainment of postsecondary readiness based on the commissioner's adopted criteria. *Education Code 39.202*

Campus Distinction

The commissioner shall award a campus a distinction designation for outstanding performance in:

1. Improvement in student achievement;
2. Closing student achievement differentials; and
3. Academic achievement in English language arts, mathematics, science, or social studies.

Education Code 39.203

The commissioner may award a distinction designation for outstanding performance in advanced middle or junior high school student achievement. *Education Code 39.203(d)*

Excellence Exemptions

Except as listed below, a district or campus that is rated A (exemplary) is exempt from requirements and prohibitions imposed under the Education Code, including regulations adopted under the Education Code.

An exemplary campus or district is not exempt from:

1. A prohibition on conduct that constitutes a criminal offense;
2. Requirements imposed by federal law or rule, including requirements for special education or bilingual education programs;
3. A requirement, restriction, or prohibition relating to:

a. Curriculum essential knowledge and skills or high school graduation requirements;

b. Public school accountability;

c. Extracurricular activities;

d. Health and safety;

e. Purchasing;

f. Elementary class size limits;

g. Removal of a disruptive student from the classroom;

h. At-risk programs;

i. Prekindergarten programs;

j. Rights and benefits of school employees;

k. Special education programs; or

l. Bilingual education programs.

The commissioner may exempt an exemplary campus from class size limits if the campus submits a written plan showing steps that will be taken to ensure that the exemption will not be harmful to the academic achievement of the students on the school campus. If granted, the exemption remains in effect until the commissioner determines that achievement levels of the campus have declined.

Education Code 39.232

District Annual Report

The board shall publish an annual report describing the educational performance of the district and of each campus in the district that includes uniform student performance and descriptive information as determined under rules adopted by the commissioner of education. *Education Code 39.306(a)*

Texas Academic Performance Report (TAPR)

The performance report provided by the Texas Education Agency (TEA) under Education Code 39.306 shall be termed the Texas Academic Performance Report (TAPR). The intent of the TAPR is to inform the public about the educational performance of the district and of each campus in the district in relation to the district, the state, and a comparable group of schools. The TAPR will present the campus performance information as well as the student, staff, and financial information required by statute. It will also include any explanations and additional information deemed appropriate to the intent of the report.

The district may not alter the report provided by TEA. However, the district may concurrently provide additional information to the public that supplements or explains information in the TAPR.

19 TAC 61.1022(a)-(b), (e); Education Code 39.306(d)

Other Annual Report Information

The annual report must also include:

1. Campus performance objectives established under Education Code 11.253 and the progress of each campus toward those objectives, which shall be available to the public;
2. Information indicating the district's accreditation status and identifying each district campus awarded a distinction designation or considered an unacceptable campus under Education Code Chapter 39A;
3. The district's current special education compliance status with the agency;
4. A statement of the number, rate, and type of violent or criminal incidents that occurred on each district campus, to the extent permitted under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g);
5. Information concerning school violence prevention and violence intervention policies and procedures that the district is using to protect students;
6. The findings that result from evaluations conducted under the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7101 et seq.);

7. Information received under Education Code 51.403(e) for each high school campus in the district, presented in a form determined by the commissioner; and

8. Progress of the district and each campus in the district toward meeting the goals set in the district's early childhood literacy and mathematics proficiency plans and college, career, and military readiness plans [see EA].

Education Code 39.306(a)

The report must include a statement of the amount, if any, of the district's unencumbered surplus fund balance as of the last day of the preceding fiscal year and the percentage of the preceding year's budget that the surplus represents. *Education Code 39.306(g)*

The report must also include the number of school counselors providing counseling services at each campus. *Education Code 39.306(d-1)*

The report may include the following information:

1. Student information, including total enrollment, enrollment by ethnicity, socioeconomic status, and grade groupings and retention rates;

2. Financial information, including revenues and expenditures;

3. Staff information, including number and type of staff by sex, ethnicity, years of experience, and highest degree held; teacher and administrator salaries; and teacher turnover;

4. Program information, including student enrollment by program, teachers by program, and instructional operating expenditures by program; and

5. The number of students placed in a disciplinary alternative education program (DAEP) under Education Code Chapter 37.

Education Code 39.306(e)

Supplemental information to be included in the reports shall be determined by the board. *Education Code 39.306(b)*

Public Hearing

The board shall hold a hearing for public discussion of the report. The board shall give notice of the hearing to property owners in the district and parents of and other persons standing in parental relation to a district student. The notice of hearing must include notice to a newspaper of general circulation in the district and notice to electronic media serving the district. *Education Code 39.306(c)*

A board shall hold a hearing for public discussion of the TAPR within 90 days after the report is received from TEA. The hearing may take place during a regularly scheduled or special meeting of the board. *19 TAC 61.1022(c)*

Publication

The TAPR must be published within two weeks after the public hearing, in the same format as it was received from TEA. *19 TAC 61.1022(d)*

The board shall disseminate the report by posting it on the district website and in public places, such as each school office, local businesses, and public libraries. *Education Code 39.306(c); 19 TAC 61.1022(f)*

Report Uses

The information in the annual report shall be a primary consideration in district and campus planning. It shall also be a primary consideration of the board in the evaluation of the performance of the superintendent, and of the superintendent in the evaluation of the performance of campus principals. *Education Code 39.307*

Campus Performance Report

Each school year, TEA shall prepare and distribute to each district a report card for each campus. The campus report card distributed by TEA shall be termed the “school” report card (SRC). The intent of the SRC is to inform each student’s parents or guardians about the school’s performance and characteristics. The SRC will present the student, staff, financial, and performance information required by statute, as well as any explanations and additional information deemed appropriate to the intent of the report.

Distribution

The district must disseminate each SRC within six weeks after the SRC is received from TEA. The school may not alter the report provided by TEA; however, it may concurrently provide additional information to the parents or guardians that supplements or explains information in the SRC.

The SRC must be distributed to the parent, guardian, conservator, or other person having lawful control of each student at the campus. On written request, a district shall provide a copy of the SRC to any other party.

The campus administration may provide the SRC in the same manner it would normally transmit official communications to parents and guardians, such as including the SRC in a weekly folder sent home with each student, mailing it to the student’s residence, providing it at a teacher-parent conference, enclosing it with the student report card, or sending it via electronic mail.

Education Code 39.305; 19 TAC 61.1021

Performance of Students Receiving Special Education Services

At least once each year, the board shall include during a public meeting a discussion of the performance of students receiving special education services at the district.

TEA shall adopt a set of performance indicators for measuring and evaluating the quality of learning and achievement for students receiving special education services at the district to be considered at a meeting held under this section. The indicators must include performance on the college, career, or military readiness outcomes described by Education Code 48.110.

Education Code 29.0012

Website Notices

Not later than the 10th day after the first day of instruction of each school year, a district that maintains an internet website shall make the following information available:

1. The information in the most recent campus report card for each campus in the district;
2. The information contained in the most recent performance report for the district;
3. The most recent accreditation status and performance rating of the district; and
4. A definition and explanation of each accreditation status, based on commissioner rule.

Education Code 39.362

Student Performance Report

Each year, TEA shall report to a district whether each student fell below, met, or exceeded the necessary target for improvement necessary to be prepared to perform satisfactorily on, as applicable, the grade five assessments, the grade eight assessments, and the end-of-course assessments required for graduation. *Education Code 39.034, .302*

Notice to Parents

The district a student attends shall provide a record of the annual improvement information from TEA in a written notice to the student's parent or other person standing in parental relationship. If a student failed to perform satisfactorily on a state assessment, the district shall include in the notice specific information relating to access to online educational resources at the appropriate assessment instrument content level, including educational resources and assessment instrument questions and released answers. *Education Code 39.303*

Notice to Teachers and Students

A district shall prepare a report of the annual improvement information and provide the report at the beginning of the school year to:

1. Each teacher for all students, including incoming students, who took a state assessment; and

2. All students who were provided instruction by that teacher in the subject for which the assessment instrument was administered.

The report shall indicate whether the student performed satisfactorily or, if the student did not perform satisfactorily, whether the student met the standard for annual improvement.

Education Code 39.304

Quality of Learning Indicators

The commissioner shall also adopt indicators of the quality of learning for the purpose of preparing performance reports. Performance on the indicators shall be evaluated in the same manner provided for evaluation of the achievement indicators under Education Code 39.053(c) [see Achievement Indicators, AIA].

The quality of learning indicators must include:

1. The percentage of graduating students who meet the course requirements for the foundation high school program, the distinguished level of achievement under the foundation high school program, and each endorsement described by Education Code 28.025(c-1) [see EIF];

2. The results of the SAT, ACT, and certified workforce training programs;

3. For students who have failed to satisfy the state standard on an assessment, the performance of those students on subsequent assessments, aggregated by grade level and subject area;

4. For each campus, the number of students, disaggregated by major student subpopulations, who take courses under the foundation high school program and take additional courses to earn an endorsement, disaggregated by type of endorsement;

5. The percentage of students, aggregated by grade level, provided accelerated instruction under Education Code 28.0211 [see EHBC] after unsatisfactory performance on a state assessment; the results of assessment instruments administered under the accelerated instruction program; the subject of the assessment instrument on which each student failed to perform satisfactorily under each performance standard; and the performance of those students in the subsequent school year on the state assessments;

6. The percentage of students of limited English proficiency exempted from the administration of an assessment;

7. The percentage of students in a special education program assessed through alternative assessment instruments;

8. The percentage of students who satisfy the college readiness measure;

9. The measure of progress toward dual language proficiency for students of limited English proficiency;

10. The percentage of students who are not educationally disadvantaged;

11. The percentage of students who enroll and begin instruction at an institution of higher education in the school year following high school graduation; and

12. The percentage of students who successfully complete the first year of instruction at an institution of higher education without needing a developmental education course.

Education Code 39.301(a)-(c)

Federal Report Card

A district that receives Title I funding shall prepare and disseminate an annual federal report card that includes information on the district as a whole and each school within the district.

Implementation

The federal report card shall be concise; presented in an understandable and uniform format, and to the extent practicable, in a language that parents can understand; and accessible to the public, which shall include placing the report card on the district's website. If the district does not operate a website, the information in the report card must be provided to the public in another manner determined by the district.

Minimum Requirements

The federal report card shall include the information required in the annual state report card described at 20 U.S.C. 6311(h)(1)(C), as applied to the district and each school served by the district, including:

1. In the case of the district, information that shows how students served by the district achieved on state academic assessments compared to students in the state as a whole;

2. In the case of a school, information that shows how the school's students' achievement on state academic assessments compared to students served by the district and the state as a whole; and

3. Any other information that the district determines is appropriate and will best provide parents, students, and other members of the public with information regarding the progress of each public school served by the district, whether or not such information is included in the annual state report card.

20 U.S.C. 6311(h)(2)

District Data on Academic Achievement

On request by the board, TEA shall create a website that members of the board may use to review campus and district academic achievement data. The website must also be made available to campuses in a similar manner that access is provided to the board.

The website must:

1. Include district information, disaggregated by campus, grade, sex, race, academic quarter or semester, as applicable, and school year, regarding the following:
    a. Student academic achievement and growth;
    b. Teacher and student attendance; and
    c. Student discipline records; and
2. Be updated at least once each quarter of the school year.

The commissioner shall provide information that permits a board member to compare the district's academic performance with the academic performance of other districts of similar size and racial and economic demographics.

A district must provide requested information to the commissioner for the creation of the website. Confidential information received by the commissioner remains confidential. The commissioner shall design the website to ensure that public information is made available to the public, and information submitted by districts noted as confidential is not made available to the public.

A request for public information under this provision shall be submitted to the district that provides the agency with the information. TEA may not release information submitted by a district that is noted as confidential information.

Education Code 11.1516

Table of Contents

Interventions and Sanctions for School Districts 3
Grounds for Commissioner Action 3
Conservator or Management Team 4
Board of Managers 5
Revocation of Accreditation 6
Intervention to Improve High School Completion Rate 6
Interventions after Certain D Ratings 7
Certain D-Rating Improvement Plans 7
Management of a Campus 8
Actions Based on Campus Performance 8
District Action Required 9
Campus Intervention Team 9
Public Hearing 12
Submission to Commissioner 12
Executing Plan 12
Local Improvement Plan 13
Campus Planning and Site-Based Decision-Making 13
Submission of Campus Improvement Plan 13
Compliance Through Federal Accountability 14
Campus Turnaround Plan 14
Updated Targeted Improvement Plan 14
Public Notice 14
Submission and Approval 14
Implementation, Modification, and Withdrawal 14
Required Contents 15
Implementing Entities 16
Commissioner Approval or Rejection 17
Preparation 18
Assistance and Partnerships 18
Modification in Campus Turnaround Plan 18
Continued Unacceptable Performance Rating 18
Repurposing of Closed Campus 19
Student Enrollment and Assignment 19
Targeted Technical Assistance 20
Alternative Management 20
Solicitation of Proposals 20

Qualifications of Managing Entity....21
Contract with Managing Entity....21
Return of Management to District....23
Applicability of Accountability Provisions....23
Funding....23
Open Meetings and Public Information....23
Board of Managers....23
General Powers and Duties....23
Board of Managers of District....24
Composition of Board of Managers....24
Training of Board of Managers....24
Compensation....24
Replacement of Member of Board of Managers....25
Expiration of Appointment....25
Removal of Board of Managers....25
Challenge of Intervention or Sanction....26
Review of Sanctions by SOAH....26
Appeals....26
Annual Review....27
Increasing Intensity....27
Intervention Programs....27
ACE Turnaround Plan....27
Resource Campus....27
Strong Foundations Intervention....27
Miscellaneous Provisions....28
Acquisition of Professional Services....28
Costs Paid by District....28
Immunity from Civil Liability....28
Campus Name Change....29
Special Program Performance Determination....29
Intervention Pause....30
Failure to Submit Emergency Operations Plan....30
Student Board Member....31

Interventions and Sanctions for School Districts

The commissioner of education shall take any of the actions authorized by Education Code Chapter 39A, Subchapter A, to the extent the commissioner determines necessary if:

Grounds for Commissioner Action

1. A district does not satisfy:
    a. The accreditation criteria under Education Code 39.052 [see AIA];
    b. The academic performance standards under Education Code 39.053 or 39.054 [see AIA]; or
    c. Any financial accountability standard as determined by commissioner rule [see CFA]; or
2. The commissioner considers the action to be appropriate on the basis of a special investigation under Education Code 39.003.

Education Code 39A.001

Authorized Commissioner Actions

If a district is subject to commissioner action, the commissioner may:

1. Issue public notice of the deficiency to the board;
2. Order a hearing to be conducted by the board to notify the public of:
    a. The insufficient performance;
    b. The improvements in performance expected by the Texas Education Agency (TEA); and
    c. The interventions and sanctions that may be imposed if the performance does not improve;
3. Order the preparation of a student achievement improvement plan that addresses each academic achievement indicator under Education Code 39.053(c) for which the district's performance is insufficient, the submission of the plan to the commissioner for approval, and the implementation of the plan;
4. Order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board and the district's superintendent shall appear and explain the district's low performance, lack of improvement, and plans for improvement;
5. Arrange a monitoring review of the district;
6. Appoint a TEA monitor to participate in and report to TEA on the activities of the board or superintendent;

7. Appoint a conservator to oversee the operations of the district;

8. Appoint a management team to direct the operations of the district in areas of insufficient performance or require the district to obtain certain services under a contract with another person;

9. Authorize the district to enter into a memorandum of understanding with an institution of higher education that provides for the assistance of the institution of higher education in improving the district's performance; or

10. Order the use of the board improvement and evaluation tool as provided by Education Code 11.182 [see BG].

Education Code 39A.002

Regardless of whether the commissioner lowers a district's status or rating, the commissioner may take action under Education Code Chapters 39 and 39A or 19 Administrative Code 97.1057 if the commissioner determines that the action is necessary to improve any area of performance by the district or campus.

Subject to 19 Administrative Code 97.1057(h)-(k), once the commissioner takes action under 19 Administrative Code Chapter 97, Subchapter EE (accreditation status, standards, and sanctions), the commissioner may impose on the district or campus any other sanction under Education Code Chapter 39 or 39A, or Subchapter EE, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in 19 Administrative Code 97.1053.

19 TAC 97.1057(c), (e)

In making a determination to impose district and campus accreditation sanctions under 19 Administrative Code Chapter 97, Subchapter EE, the commissioner shall meet the requirements of 19 Administrative Code 97.1059. *19 TAC 97.1059*

Conservator or Management Team

The commissioner shall clearly define the powers and duties of a conservator or management team appointed to oversee the operations of a district.

At least every 90 days, the commissioner shall review the need for the conservator or management team and shall remove the conservator or management team unless the commissioner determines that continued appointment is necessary for effective governance of the district or delivery of instructional services.

A conservator or management team, if directed by the commissioner, shall prepare a plan for the implementation of the appointment of a board of managers or the revocation of accreditation.

The conservator or management team may:

1. Direct an action to be taken by the principal of a campus, the superintendent of the district, or the board; and

2. Approve or disapprove any action of the principal of a campus, the superintendent of the district, or the board.

The conservator or management team may not:

1. Take any action concerning a district election, including ordering or canceling an election or altering the date of or the polling places for an election;

2. Change the number of or method of selecting the board;

3. Set a tax rate for the district; and

4. Adopt a budget for the district that provides for spending a different amount, exclusive of required debt service, from that previously adopted by the board.

A conservator or management team may exercise the powers and duties defined by the commissioner or described above regardless of whether the conservator or management team was appointed to oversee the operations of a district in its entirety or the operations of a certain campus within the district.

Education Code 39A.003

Regardless of whether a district has satisfied the accreditation criteria, if for two consecutive school years, including the current school year, a district has had a conservator or management team assigned to the district or campus for any reason, the commissioner may appoint a board of managers, a majority of whom must be residents of the district, to exercise the powers and duties of the board of trustees. For purposes of this subsection, a school year begins on the first day of instruction and includes any portion of the school year. This applies to an appointed conservator or management team, regardless of the scope or any changes to the scope of the conservator's or team's oversight. *19 TAC 97.1057(d); Education Code 39A.006(a)-(b)*

Board of Managers

The commissioner may appoint a board of managers to exercise the powers and duties of a district's board if the district is subject to commissioner action and:

1. Has a current accreditation status of accredited-warned or accredited-probation;
2. Fails to satisfy any standard under Education Code 39.054(e); or
3. Fails to satisfy financial accountability standards as determined by commissioner rule.

Education Code 39A.004

Revocation of Accreditation

The commissioner may revoke the accreditation of a district if the district is subject to commissioner action, and for two consecutive school years, including the current school year, the district has:

1. Received an accreditation status of accredited-warned or accredited-probation;
2. Failed to satisfy any standard under Education Code 39.054(e); or
3. Failed to satisfy financial accountability standards as determined by commissioner rule.

In addition to revoking a district's accreditation, the commissioner may:

1. Order closure of the district and annex the district to one or more adjoining districts under Education Code 13.054; or
2. In the case of a home-rule school district, order closure of all programs operated under the district's charter.

Education Code 39A.005

Intervention to Improve High School Completion Rate

If a district is subject to commissioner action and the district has failed to satisfy any standard under Education Code 39.054(e) because of the district's dropout rates, the commissioner may impose sanctions against a district designed to improve high school completion rates, including:

1. Ordering the development of a dropout prevention plan for approval by the commissioner;
2. Restructuring the district or appropriate campuses to improve identification of and service to students who are at risk of dropping out of school, as defined by Education Code 29.081;
3. Ordering lower student-to-counselor ratios on campuses with high dropout rates; and

4. Ordering the use of any other intervention strategy effective in reducing dropout rates, including mentor programs and flexible class scheduling.

Education Code 39A.007

Interventions after Certain D Ratings

Until another performance rating is issued, TEA may not implement the following intervention or sanctions to a D-rated district or campus, if the D rating is considered acceptable [see AIA]. The following interventions and sanctions are subject to a pause:

1. Revocation of a charter under Education Code 12.115(c);
2. Annexation under Education Code 13.054;
3. Change in accreditation status under rules adopted for accreditation under Education Code 39.052; and
4. Interventions or sanctions under Education Code 39A.101(a), 39A.107(a) or (c), or 39A.111.

A performance rating of D that is considered acceptable may not be included in calculating consecutive school years of unacceptable performance ratings and is not considered a break in consecutive school years of unacceptable performance ratings.

Interventions or sanctions implemented prior to a pause shall continue during a school year for which interventions or sanctions listed above are paused.

Education Code 39A.118

Certain D-Rating Improvement Plans

A district or campus that is assigned a rating of D that qualifies under Education Code 39.0543(b) [see AIA] shall develop and implement a local improvement plan using the guidance provided by TEA.

The district or campus shall:

1. Conduct a data analysis related to areas of low performance;
2. Conduct a needs assessment based on the results of the data analysis, as follows:
    a. The needs assessment shall include a root cause analysis.
    b. Root causes identified through the needs assessment will be addressed in the local improvement plan; and
3. Create a local improvement plan, as follows:

a. Input must be gathered from the principal; campus-level committee established under Education Code 11.251 [see BQB]; parents; and community members, prior to the development of the local improvement plan, using the following steps.

(1) The campus must hold a public meeting at the campus. The campus shall take reasonable steps to conduct the meeting at a time and in a manner that would allow a majority of stakeholders to attend and participate. The campus may hold more than one meeting if necessary.

(2) The public must be notified of the meeting 15 days prior to the meeting by way of the district and campus website, local newspapers or other media that reach the general public, and the parent liaison, if present on the campus.

(3) All input provided by family and community members should be considered in the development of the final local improvement.

b. The completed local improvement plan must be presented at a public hearing and approved by the board.

19 TAC 97.1061(b)

Management of a Campus

Actions Based on Campus Performance

If the performance of a campus is below any standard under Education Code 39.054(e), the commissioner shall:

1. Take actions, to the extent the commissioner determines necessary, as provided by Education Code Chapter 39A; and
2. Assign a campus intervention team.

To the extent the commissioner determines necessary, the commissioner may:

1. Order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board, the superintendent, and the campus principal shall appear and explain the campus's low performance, lack of improvement, and plans for improvement;
2. Establish a school community partnership team composed of members of the campus-level planning and decision-making committee and additional community representatives as determined appropriate by the commissioner;

3. If applicable under the strong foundations intervention under Education Code 39A.064, require the district to comply with all requirements of the strong foundations grant program under Education Code 29.0881 for the campus; or

4. Any combination of the actions described by items 1 through 3 above.

Education Code 39A.051

District Action Required

If a campus's performance is below any standard under Education Code 39.054(e), the campus shall engage in interventions as described by TEA. The commissioner shall assign members to a campus intervention team as outlined in 19 Administrative Code 97.1063 and Education Code 39A.052. The campus shall establish a campus leadership team (CLT) that includes the campus principal and other campus leaders responsible for the development, implementation, and monitoring of the targeted improvement plan.

If a campus is assigned an unacceptable rating under Education Code 39.054(e):

1. For a second consecutive year, the campus must engage in the processes outlined in this provision, and the campus must develop a campus turnaround plan to be approved by the commissioner.

2. For a third or fourth consecutive year, the campus must engage in the processes outlined in this provision, and the campus must implement the commissioner-approved campus turnaround plan as described in 19 Administrative Code 97.1064.

3. For a fifth consecutive year, the commissioner shall order the appointment of a board of managers to govern the district or the closure of the campus.

Based on a campus's progress toward improvement, the commissioner may order a hearing if a campus's performance is below any standard under Education Code 39.054(e).

Interventions and sanctions listed under this provision begin upon release of preliminary ratings and may be adjusted based on final accountability ratings.

19 TAC 97.1061(a), (d), (f)-(j)

Campus Intervention Team

The campus intervention team shall follow the requirements of 19 Administrative Code 97.1061 and Education Code 39.106.

A campus intervention team assigned by the commissioner may include teachers, principals, other educational professionals, and superintendents recognized for excellence in their roles and appointed by the commissioner to serve as members of a team. *Education Code 39A.052*

A campus intervention team must include a district coordinator of school improvement (DCSI) and the campus principal's direct supervisor, if the DCSI is not the campus principal's direct supervisor. The DCSI must submit qualifications to TEA for approval.

An education professional, approved through an application either by TEA or TEA's technical assistance provider, who is not an employee of the campus or district, shall assist with the needs assessment.

19 TAC 97.1063(b)-(c)

On-Site Needs Assessment

A campus intervention team shall:

1. Conduct, with the involvement and advice of the school community partnership team, if applicable:
    a. If the commissioner determines necessary, a comprehensive on-site needs assessment; or
    b. A targeted on-site needs assessment relevant to an area of insufficient performance of the campus; and
2. Recommend appropriate actions as provided by Education Code 39A.054.

An on-site needs assessment must determine the factors resulting in the campus's low performance and lack of progress, including the contributing education-related factors.

In conducting a comprehensive on-site needs assessment, the campus intervention team shall use each of the guidelines and procedures at Education Code 39A.053(c) and 19 Administrative Code 97.1061(e).

In conducting a targeted on-site needs assessment, the campus intervention team shall use the appropriate guidelines and procedures described above relevant to each area of insufficient performance.

Education Code 39A.053; 19 TAC 97.1061(e)

Recommendations

On completing the on-site needs assessment, the campus intervention team shall, with the involvement and advice of the school community partnership team, if applicable, recommend actions relating to any area of insufficient performance, including:

1. Reallocation of resources;
2. Technical assistance;
3. Changes in school procedures or operations;
4. Staff development for instructional and administrative staff;
5. Intervention for individual administrators or teachers;
6. Waivers from state statutes or rules;
7. Teacher recruitment or retention strategies and incentives provided by the district to attract and retain appropriately certified and experienced teachers; or
8. Other actions the campus intervention team considers appropriate.

Education Code 39A.054

Targeted Improvement Plan

In addition to the duties relating to the on-site needs assessment, the campus intervention team shall:

1. Assist the campus in developing a targeted improvement plan;
2. Conduct a public meeting at the campus with the campus principal, the members of the campus-level planning and decision-making committee, parents of students attending the campus, and community members residing in the district to review the campus performance rating and solicit input for the development of the targeted improvement plan [see Notice of Public Meeting, below];
3. Assist the campus in submitting the targeted improvement plan to the board for approval and presenting the plan in a public hearing [see Public Hearing, below]; and
4. Assist the commissioner in monitoring the progress of the campus in executing the targeted improvement plan.

Education Code 39A.055; 19 TAC 97.1061(e)(3)-(4)

Notice of Public Meeting

The campus intervention team must provide written notice of the public meeting to the parents of students attending the campus and post notice of the meeting on the campus's internet website. The notice must include the date, time, and place of the meeting. *Education Code 39A.056*

The public must be notified of the meeting 15 days prior to the meeting by way of the district and campus website, local newspa-

pers or other media that reach the general public, and the parent liaison, if present on the campus. *19 TAC 97.1061(e)(3)(A)(ii)*

Public Hearing

After a targeted improvement plan or an updated targeted improvement plan is submitted to the board, the board shall conduct a hearing to:

1. Notify the public of:
    a. The insufficient performance of the campus;
    b. The improvements in performance expected by TEA; and
    c. The intervention measures or sanctions that may be imposed under Education Code Chapter 39A if the performance does not improve within a designated period; and
2. Solicit public comment on the targeted improvement plan or updated targeted improvement plan.

The board must post the targeted improvement plan on the district's internet website before the hearing.

The board may conduct one hearing relating to one or more campuses subject to a targeted improvement plan or an updated targeted improvement plan.

Education Code 39A.057

Submission to Commissioner

The board shall submit the targeted improvement plan or updated targeted improvement plan to the commissioner for approval. The campus intervention team shall assist the campus in submitting the targeted improvement plan to the commissioner. *Education Code 39A.058*

Executing Plan

In executing the targeted improvement plan, the campus intervention team shall, if appropriate:

1. Assist the campus in implementing research-based practices for curriculum development and classroom instruction, including bilingual education and special education programs, and financial management;
2. Provide research-based technical assistance, including data analysis, academic deficiency identification, intervention implementation, and budget analysis, to strengthen and improve the instructional programs at the campus; and

3. Require the district to develop a teacher recruitment and retention plan to address the qualifications and retention of the teachers at the campus.

Education Code 39A.059

Continuing Duties of the Campus Intervention Team

For each year a campus is assigned an unacceptable performance rating, the campus intervention team shall:

1. Assist in updating the targeted improvement plan to identify and analyze areas of growth and areas that require improvement; and

2. Submit each updated targeted improvement plan to the board.

Education Code 39A.060

Local Improvement Plan

A district or campus that is assigned a rating of D that is considered acceptable [see AIA] shall develop and implement a local improvement plan.

A local improvement plan must be presented to the board.

Education Code 39A.065(a)-(b)

Campus Planning and Site-Based Decision-Making

The commissioner may authorize a school community partnership team established under Education Code 39A.051 to supersede the authority of and satisfy the requirements of establishing and maintaining a campus-level planning and decision-making committee.

The commissioner may authorize a targeted improvement plan, an updated targeted improvement plan, or a local improvement plan to supersede the provisions of and satisfy the requirements of developing, reviewing, and revising a campus improvement plan.

Education Code 39A.061

Submission of Campus Improvement Plan

If the performance of a campus satisfies performance standards under Education Code 39.054(e) for the current school year but would not satisfy the performance standards if the standards to be used for the following school year were applied to the current school year, on the request of the commissioner, the campus-level planning and decision-making committee shall revise and submit to the commissioner the portions of the campus improvement plan that are relevant to those areas for which the campus would not satisfy performance standards. The revised portions of the improvement plan must be submitted in an electronic format. *Education Code 39A.062*

Compliance Through Federal Accountability

Notwithstanding the provisions of Education Code Chapter 39A, if the commissioner determines that a campus subject to interventions or sanctions has implemented substantially similar intervention measures under federal accountability requirements, the commissioner may accept the substantially similar intervention measures as measures in compliance with Education Code Chapter 39A. *Education Code 39A.063*

Campus Turnaround Plan

If a campus has been identified as unacceptable for two consecutive school years, the commissioner shall order the campus to prepare and submit a campus turnaround plan.

Updated Targeted Improvement Plan

A campus intervention team shall assist the campus in:

1. Developing an updated targeted improvement plan, including a campus turnaround plan to be implemented by the campus;
2. Submitting the updated targeted improvement plan to the board for approval and presenting the plan in a public hearing as provided by Education Code 39A.057;
3. Obtaining approval of the updated plan from the commissioner; and
4. Executing the updated plan on approval by the commissioner.

The updated targeted improvement plan submitted to the board must include all plans and details that are required to execute the campus turnaround plan without any additional action or approval by the board.

Education Code 39A.101

Public Notice

Within 60 days of receiving a campus's preliminary accountability rating, the district must notify parents, community members, and stakeholders that the campus received an unacceptable rating for two consecutive years and request assistance in developing the campus turnaround plan in accordance with 19 Administrative Code 97.1064. *19 TAC 97.1064(d)*

Submission and Approval

Upon approval of the board, the district must submit the campus turnaround plan electronically to TEA by March 1 unless otherwise specified. Not later than June 15 of each year, the commissioner must either approve or reject any campus turnaround plan prepared and submitted by a district. *19 TAC 97.1064(g)-(h); Education Code 39A.103-.104*

Implementation, Modification, and Withdrawal

A campus may implement, modify, or withdraw its campus turnaround plan with board approval if the campus receives an academically acceptable rating for the school year following the development of the campus turnaround plan.

A campus that has received an unacceptable rating for the school year following the development of the campus turnaround plan must implement its commissioner-approved campus turnaround plan with fidelity until the campus operates for two consecutive school years without an unacceptable rating.

Change in Circumstances

A campus may modify its campus turnaround plan with commissioner approval if it is determined that due to a change in circumstances occurring after the plan's approval under Education Code 39A.107 a modification of the plan is necessary to achieve the plan's objectives.

A change in circumstance may be the following, but not limited to:

1. A campus that has written a turnaround plan but has not yet been ordered to implement it and has received a Not Rated; Declared State of Disaster rating for two consecutive years prior to receiving its next F rating; or
2. A campus that has implemented its turnaround plan for no more than one year prior to receiving a Not Rated; Declared State of Disaster rating for two consecutive years.

A campus that has modified its turnaround plan under this provision may only request additional modifications to the plan based on circumstances that have changed since the last commissioner-approved modification.

Commissioner Authority

The commissioner may appoint a monitor, conservator, management team, or board of managers for a school district that has a campus that has been ordered to implement an updated targeted improvement plan. The commissioner may order any of the interventions as necessary to ensure district-level support for the low-performing campus and the implementation of the updated targeted improvement plan. The commissioner may make the appointment at any time during which the campus is required to implement the updated targeted improvement plan.

19 TAC 97.1064(j)-(m)

Required Contents

A campus turnaround plan must include:

1. Details on the method for restructuring, reforming, or reconstituting the campus;
2. A detailed description of the academic programs to be offered at the campus, including:
    a. Instructional methods;
    b. Length of school day and school year;

c. Academic credit and promotion criteria; and

d. Programs to serve special student populations;

3. If a district charter is to be granted for the campus under Education Code 12.0522:

a. The term of the charter; and

b. Information on the implementation of the charter;

4. Written comments from:

a. The campus-level committee established under Education Code 11.251, if applicable;

b. Parents; and

c. Teachers at the campus;

5. A detailed description of the budget, staffing, and financial resources required to implement the plan, including any supplemental resources to be provided by the district or other identified sources; and

6. A detailed description for developing and supporting the oversight of academic achievement and student performance by the board of trustees under Education Code 11.1515.

Education Code 39A.105(a) [Acts of the 85th Legislative Session, Senate Bill 1566, amended former Education Code 39.107(b-1) to include the information provided at Subsection (6)]

Implementing Entities

A campus ordered to prepare a campus turnaround plan shall implement the updated targeted improvement plan as approved by the commissioner.

The commissioner may appoint a monitor, conservator, management team, or board of managers to the district to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan.

The commissioner shall appoint a conservator to a district unless and until each campus in the district for which a campus turnaround plan has been ordered receives an acceptable performance rating for the school year or the commissioner determines a conservator is not necessary.

In making appointments, the commissioner shall consider individuals who have demonstrated success in managing campuses with

student populations similar to the campus at which the individual appointed will serve.

Education Code 39A.102, .108

Effective Date

A campus turnaround plan must take effect not later than the school year following the third consecutive school year that the campus has received an unacceptable performance rating. *Education Code 39A.106*

Commissioner Approval or Rejection

Not later than June 15 of each year, the commissioner shall, in writing, either approve or reject any campus turnaround plan prepared and submitted to the commissioner by a district. If the commissioner rejects a campus turnaround plan, the commissioner must also send the district an outline of the specific concerns regarding the turnaround plan that resulted in the rejection. *Education Code 39A.107(a-1)*

If the commissioner rejects a campus turnaround plan, the district must create a modified plan with assistance from TEA staff and submit the modified plan to the commissioner for approval not later than the 60th day after the date the commissioner rejects the campus turnaround plan. The commissioner shall notify the district in writing of the commissioner's decision regarding the modified plan not later than the 15th day after the date the commissioner receives the modified plan. *Education Code 39A.107(a-2)*

The commissioner may approve a campus turnaround plan only if the commissioner determines that the campus will satisfy all student performance standards required under Education Code 39.054(e) not later than the second year the campus receives a performance rating following the implementation of the campus turnaround plan.

Education Code 12.0522(b) does not apply to a district charter approved by the commissioner. An approved district charter may be renewed or continue in effect after the campus is no longer subject to the commissioner’s order under Education Code 39A.101.

If the commissioner does not approve a campus turnaround plan, the commissioner shall order:

1. Appointment of a board of managers to govern the district;
2. Alternative management of the campus; or
3. Closure of the campus.

Education Code 39A.107; 19 TAC 97.1065

Preparation

Following approval of a campus turnaround plan by the commissioner, the district, in consultation with the campus intervention team, may take any actions needed to prepare for the implementation of the plan. *Education Code 39A.108*

Assistance and Partnerships

A district may:

1. Request that a regional education service center provide assistance in the development and implementation of a campus turnaround plan; or
2. Partner with an institution of higher education to develop and implement a campus turnaround plan.

Education Code 39A.109

Modification in Campus Turnaround Plan

If a campus for which a campus turnaround plan has been ordered receives an acceptable performance rating for the school year following the order, the board may:

1. Implement the campus turnaround plan;
2. Implement a modified version of the campus turnaround plan; or
3. Withdraw the campus turnaround plan.

A district required to implement a campus turnaround plan may modify the plan if the campus receives an acceptable performance rating for two consecutive school years following implementation of the plan.

The commissioner may authorize modification of an approved campus turnaround plan if the commissioner determines that due to a change in circumstances occurring after the plan's approval, a modification of the plan is necessary to achieve the plan's objectives.

Education Code 39A.110

Continued Unacceptable Performance Rating

If a campus is considered to have an unacceptable performance rating for five consecutive school years, the commissioner shall order:

1. Appointment of a board of managers to govern the district; or
2. Closure of the campus.

Education Code 39A.111

Parent Petition for Action

“Parent” means the parent who is indicated on the student registration form at that campus and the signature of only one parent of a student is required.

If the commissioner is presented, in the time and manner specified by commissioner rule, with a written petition signed by the parents of a majority of the students enrolled at a campus with an unacceptable performance rating for three consecutive school years, specifying an authorized action that the parents request the commissioner to order, the commissioner shall order the specific action requested.

If the board presents to the commissioner, in the time and manner specified by commissioner rule, a written request that the commissioner order specific authorized action other than the specific action requested in the parents' petition and a written explanation of the basis for the board's request, the commissioner may order the action requested by the board.

Education Code 12.051, 39A.112; 19 TAC 97.1065(d)

Repurposing of Closed Campus

If the commissioner orders the closure of a campus, that campus may be repurposed to serve students at that campus location only if the commissioner finds that the repurposed campus offers a distinctly different academic program and approves a new campus identification number for the repurposed campus. A campus may be repurposed if the campus:

1. Serves a majority of grade levels not served at the original campus; or

2. Is operated under a contract, approved by the school board, with a nonprofit organization exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986 that:

    a. Has a governing board that is independent of the district;

    b. Has a successful history of operating school district campuses or open-enrollment charter schools:

        (1) That cumulatively serve 10,000 or more students; and

        (2) A majority of which have been assigned an overall performance rating of B or higher under Education Code 39.054 for the preceding school year; and

    c. Has been assigned an overall performance rating of B or higher under Education Code 39.054 for the preceding school year.

Student Enrollment and Assignment

Any student assigned to a campus that has been closed must be allowed to transfer to any other campus in the district that serves that student's grade level and on request must be provided transportation to the other campus.

The commissioner may grant an exemption allowing students assigned to a closed campus to attend the repurposed campus if there is no other campus in the district at which the students may enroll.

Noncontracted Repurposed Campus

The majority of students assigned to a campus that has been closed and repurposed may not have attended that campus in the previous school year if the campus was repurposed to serve a majority of grade levels not served at the original campus.

Enrollment Provision in Contract

A contract approved by the school board with a nonprofit organization must provide that a student residing in the attendance zone of the campus immediately before the campus was repurposed shall be admitted for enrollment at the repurposed campus.

Education Code 39A.113; 19 TAC 97.1066

Targeted Technical Assistance

If the commissioner determines that the basis for the unacceptable performance of a campus for more than two consecutive school years is limited to a specific condition that may be remedied with targeted technical assistance, the commissioner may require the district to contract for the appropriate technical assistance. *Education Code 39A.114*

Alternative Management

The commissioner shall appoint a monitor, conservator, management team, or board of managers whenever such action is required, as determined by 19 Administrative Code 97.1073. Action under any other section of 19 Administrative Code Chapter 97, Subchapter EE is not a prerequisite to acting under this section. *19 TAC 97.1073*

The superintendent, upon appointment, immediately assumes all powers, duties, rights, and responsibilities of the superintendent of the district to which the superintendent is appointed.*19 TAC 97.1073(f)*

Solicitation of Proposals

If the commissioner orders alternative management of a campus, the commissioner shall solicit proposals from qualified nonprofit entities to assume management of the campus or appoint a school district as provided below. The commissioner may solicit proposals from qualified for-profit entities if a nonprofit entity has not responded to the commissioner's request for proposals.

The commissioner may appoint a school district to assume management of the campus if the district:

1. Is not the district in which the campus is located; and
2. Is located within the boundaries of the same regional education service center as the campus.

If a school district is appointed, the district shall assume management of the campus in the same manner as a qualified entity or in accordance with commissioner rule.

The commissioner may annually solicit proposals for the alternative management of a campus. The commissioner shall notify a qualified entity that has been approved as a provider under this section.

Education Code 39A.151

Qualifications of Managing Entity

To qualify for consideration as a managing entity, the entity must submit a proposal that provides information relating to the entity's management and leadership team that will participate in management of the campus under consideration, including information relating to individuals who have:

1. Documented success in whole school interventions that increased the educational and performance levels of students in campuses considered to have an unacceptable performance rating;
2. A proven record of effectiveness with programs assisting low-performing students;
3. A proven ability to apply research-based school intervention strategies;
4. A proven record of financial ability to perform under the management contract; and
5. Any other experience or qualifications the commissioner determines necessary.

In selecting a managing entity, the commissioner shall give preference to a qualified entity that:

1. Meets any of the commissioner’s qualifications; and
2. Has documented success in educating students from similar demographic groups and with similar educational needs as the students who attend the campus to be operated by the managing entity.

Education Code 39A.152

Contract with Managing Entity

If the commissioner has ordered alternative management of a campus, the district shall execute a contract with an approved provider to serve as a managing entity for the campus. The term of the contract may not exceed five years with an option to renew the contract. The district must execute the contract and relinquish control of the campus before January 1 of the school year.

The management contract must include:

1. A provision describing the district's responsibilities in supporting the operation of the campus; and

2. Provisions approved by the commissioner requiring the managing entity to demonstrate improvement in campus performance, including negotiated performance measures.

Performance measures must be consistent with the priorities of Education Code Chapters 39 and 39A.

The management contract must be approved by the commissioner before the contract is executed. As appropriate, the commissioner may require the district, as a term of the contract, to support the campus in the same manner as the district was required to support the campus before the execution of the contract.

Education Code 39A.153; 19 TAC 97.1067

Extension of Management Contract

The commissioner may require a district to extend the term of a management contract with a managing entity if the commissioner determines that extending the contract on expiration of the initial term is in the best interest of the students attending the campus. The terms of the contract must be approved by the commissioner. *Education Code 39A.154*

Evaluation of Managing Entity

The commissioner shall evaluate a managing entity's performance on the first and second anniversaries of the date of the management contract.

If the evaluation fails to demonstrate improvement as negotiated under the management contract by the first anniversary of the date of the contract, the district may:

1. Terminate the contract, with the commissioner's consent, for nonperformance or breach of contract; and

2. Select another provider from an approved list provided by the commissioner.

If the evaluation fails to demonstrate significant improvement, as determined by the commissioner, by the second anniversary of the date of the management contract, the district shall:

1. Terminate the contract; and

2. Select another provider from an approved list provided by the commissioner or resume operation of the campus if approved by the commissioner.

If the commissioner approves the district's resumed operation of the campus, the commissioner shall assign a technical assistance team to assist the campus.

Education Code 39A.155

Cancellation of Management Contract

If a campus receives an unacceptable performance rating for two consecutive school years after a managing entity assumes management of the campus, the commissioner shall cancel the contract with the managing entity. *Education Code 39A.156*

Return of Management to District

Unless a campus has an unacceptable performance rating for three consecutive school years [see Continued Unacceptable Performance Rating, above], at the end of a management contract term or on the cancellation of a management contract, the board shall resume management of the campus. *Education Code 39A.157*

Applicability of Accountability Provisions

Each campus operated by a managing entity is subject to Education Code Chapters 39 and 39A in the same manner as any other campus in the district. *Education Code 39A.158*

Funding

The funding for a campus operated by a managing entity may not be less than the funding of the other campuses in the district on a per student basis so that the managing entity receives at least the same funding the campus would otherwise have received. *Education Code 39A.159*

Open Meetings and Public Information

With respect to the management of a campus by a managing entity:

1. A managing entity is considered to be a governmental body for purposes of Government Code Chapter 551 (Open Meetings Act) and Government Code Chapter 552 (Public Information Act); and

2. Any requirement in the Open Meetings Act or Public Information Act that applies to a school district or the board of trustees of a district applies to a managing entity.

Education Code 39A.160

Board of Managers

General Powers and Duties

Notwithstanding Education Code 11.151(b) or 11.1511(a) or any other provision of the Education Code, a board of managers may exercise all of the powers and duties assigned to a board of trustees of a school district by law, rule, or regulation.

A board of managers appointed by the commissioner is required to take appropriate actions to resolve the conditions that caused a campus to be subject to the commissioner’s order, including amending the district's budget, reassigning staff, or relocating aca-

demic programs. The commissioner may adopt rules necessary to implement this subsection.

Education Code 39A.201

Board of Managers of District

Notwithstanding Education Code 11.151(b) or 11.1511(a) or any other provision of the Education Code, if the commissioner appoints a board of managers to govern a district:

1. The powers of the board are suspended for the period of the appointment; and

2. The commissioner shall appoint a district superintendent.

A board of managers appointed to govern a school district may amend the budget of the district.

Education Code Chapter 39A applies to a school district governed by a board of managers in the same manner it applies to any other district.

Education Code 39A.202

Composition of Board of Managers

A board of managers appointed by the commissioner must, if possible, include community leaders, business representatives who have expertise in leadership, and individuals who have knowledge or expertise in the field of education. *Education Code 39A.204*

Training of Board of Managers

The commissioner must provide each individual appointed to a board of managers with training in effective leadership strategies. *Education Code 39A.205*

The training in effective leadership strategies shall be provided by TEA-approved authorized providers of board training to each individual appointed by the commissioner to a board of managers, and, following the expiration of the appointment of the board of managers, to the board of trustees of the school district. *19 TAC 97.1073(i)*

A board member appointed under 19 Administrative Code 97.1073(h)(4) must complete the training required in this provision prior to or within 10 days of the appointment. Failure to do so may result in the removal of the board of trustees member from the board of managers. *19 TAC 97.1073(j)*

Compensation

The commissioner may authorize payment of a board of managers from TEA funds.

A conservator or a member of a management team appointed to serve on a board of managers may continue to be compensated as determined by the commissioner.

Education Code 39A.206

Replacement of Member of Board of Managers

The commissioner may at any time replace a member of a board of managers. The commissioner may adopt rules necessary to implement this section. *Education Code 39A.207*

Expiration of Appointment

A board of managers shall, during the period of the appointment, order the election of members of the board of trustees of the school district in accordance with the law. The members of the board of trustees do not assume any powers or duties after the election until the appointment of the board of managers expires.

Not later than the second anniversary of the date the board of managers of a school district was appointed, the commissioner shall notify the board of managers and the board of trustees of the date on which the appointment of the board of managers will expire. Following each of the last three years of the period of the appointment, one-third of the members of the board of managers shall be replaced by the number of members of the board of trustees who were elected at an election that constitutes, as closely as possible, one-third of the membership of the board of trustees.

If, before the second anniversary of the date the board of managers of a school district was appointed, the commissioner determines, after receiving local feedback, that insufficient progress has been made toward improving the academic or financial performance of the district, the commissioner may extend the authority of the board of managers for a period of up to two additional years.

On the expiration of the appointment of the board of managers, the board of trustees assumes all of the powers and duties assigned to a board of trustees by law, rule, or regulation.

Following the expiration of the period of appointment of a board of managers for a school district, the commissioner shall provide training in effective leadership strategies to the board of trustees.

Education Code 39A.208; 19 TAC 97.1073

Removal of Board of Managers

The commissioner may remove a board of managers appointed to govern a school district only if the campus that was the basis for the appointment of the board of managers receives an acceptable performance rating for two consecutive school years.

If a campus that was the basis for the appointment of a board of managers receives an unacceptable performance rating for two additional consecutive years following the appointment of the board of managers, the commissioner may remove the board of managers and, in consultation with the local community, may appoint a new board of managers to govern the district.

Following the removal of a board of managers, or at the request of a managing entity to oversee the implementation of alternative management, the commissioner may appoint a conservator or monitor for the district to ensure district-level support for low-performing campuses and to oversee the implementation of the updated targeted improvement plan.

Education Code 39A.209; 19 TAC 97.1073

Challenge of Intervention or Sanction

Review of Sanctions by SOAH

A district must appeal under this provision if the district intends to challenge the commissioner's decision to close the district or a campus, pursue alternative management of a campus, appoint a board of managers to the district, or appoint a conservator or management team to the district.

A challenge is under the substantial evidence rule [see Government Code Chapter 2001, Subchapter G]. The commissioner shall adopt procedural rules for a challenge under this section.

Notwithstanding other law:

1. The State Office of Administrative Hearings (SOAH) shall conduct an expedited review of a challenge;
2. The administrative law judge shall issue a final order not later than the 30th day after the date on which the hearing is finally closed;
3. The decision of the administrative law judge is final and may not be appealed; and
4. The decision of the administrative law judge may set an effective date for an action under this section.

Education Code 39A.301

Appeals

If an order, decision, or determination is described as final in Education Code Chapter 7, 11, 12, 39, or 39A, an interlocutory or intermediate order, decision, report, or determination made or reached before the final order, decision, or determination may be appealed only as specifically authorized by the Education Code or a rule adopted under the Education Code. *Education Code 5.003*

A decision by the commissioner under Education Code Chapter 39 or 39A is final and may not be appealed unless an applicable provision of Chapter 39 or 39A provides otherwise. *Education Code 39A.906*

Annual Review

The commissioner shall annually review the performance of a district or campus subject to intervention and sanction to determine the appropriate actions to be implemented.

The commissioner must review at least annually the performance of a district for which the accreditation status or performance rating has been lowered due to insufficient student performance and may not raise the accreditation status or performance rating until the district has demonstrated improved student performance.

If the review reveals a lack of improvement, the commissioner shall increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

Education Code 39A.901

Increasing Intensity

If a district or campus does not exhibit improvement in student performance, the commissioner may increase the intensity of intervention and sanction that would otherwise be required by statute or rule, including ordering campus closure, district annexation, or appointment of a board of managers.

For purposes of this section, improvement means an increase in the scaled score for the overall academic performance rating under Education Code Chapter 39.

19 TAC 97.1070(a)-(b)

Intervention Programs

ACE Turnaround Plan

A campus may submit an accelerated campus excellence (ACE) turnaround plan. The plan must meet the requirements of Education Code 39A.105(b). *Education Code 39A.105(b)-(c)*

Resource Campus

An eligible campus may apply to the commissioner to be designated as a resource campus that provides quality education and enrichment for campus students. To apply to be designated as a resource campus, the campus must have received an overall performance rating of D or F, or an overall performance rating under Education Code 39.054(a-4)(1) (following declaration of disaster) or 39.0546 (COVID-19 recovery) of “Not Rated,” for three years over a 10-year period of time. *Education Code 29.934(a)-(b)*

Strong Foundations Intervention

Notwithstanding when a D rating is considered acceptable or any other law, the commissioner may require a district to comply with all requirements of the strong foundations grant program under Education Code 29.0881 at a campus that:

1. Includes students at any grade level from prekindergarten through fifth grade;
2. Is assigned an overall performance rating of D or F; and
3. Is in the bottom five percent of campuses in the state based on student performance on the grade three state reading assessment during the previous school year, as determined by the commissioner.

Education Code 39A.064(a)

Miscellaneous Provisions

Acquisition of Professional Services

In addition to other authorized interventions and sanctions, the commissioner may order a district or campus to acquire professional services at the expense of the district or campus to address the applicable financial, assessment, data quality, program, performance, or governance deficiency. The commissioner's order may require the district or campus to:

1. Select or be assigned an external auditor, data quality expert, professional authorized to monitor district assessment instrument administration, or curriculum or program expert; or
2. Provide for or participate in the appropriate training of district staff or board members in the case of a district, or campus staff, in the case of a campus.

Education Code 39A.902

Costs Paid by District

The costs of providing a monitor, conservator, management team, campus intervention team, technical assistance team, managing entity, or service provider shall be paid by the district. If the district fails or refuses to pay the costs in a timely manner, the commissioner may:

1. Pay the costs using amounts withheld from any funds to which the district is otherwise entitled; or
2. Recover the amount of the costs in the manner provided for recovery of an over allocation of state funds under Education Code 48.272.

Education Code 39A.903

Immunity from Civil Liability

An employee, volunteer, or contractor acting on behalf of the commissioner, or a member of a board of managers appointed by the commissioner, is immune from civil liability to the same extent as a professional employee of a district under Education Code 22.051. *Education Code 39A.904*

Campus Name Change

In reconstituting, repurposing, or imposing any other intervention or sanction on a campus, the commissioner may not require that the name of the campus be changed. *Education Code 39A.905*

Special Program Performance Determination

The commissioner shall assign districts an annual determination level based on performance levels of certain special populations student groups under 19 Administrative Code 97.1001 [see AIA] according to the criteria and requirements in 19 Administrative Code 97.1071(e)-(g).

In addition to determination levels, the commissioner shall develop a system of cyclical monitoring to ensure every district participates in general supervision activities. Based on a district's assigned determination level, as part of its cyclical monitoring process, or as part of compliance monitoring activities, a district may be required to implement and/or participate in:

1. Focused self-analysis of district data and program effectiveness;
2. Focused remote and/or on-site review;
3. Required stakeholder engagement;
4. Focused compliance reviews;
5. Strategic support and continuous improvement planning; and/or
6. Corrective action plan development.

The commissioner shall notify in writing each district identified for review under this provision as a result of assigned determination level or cyclical selection prior to requiring a district to implement or participate in any activities included in items 1-6 above.

Actions taken under this provision are intended to assist the district in raising its performance and/or achieving compliance under 19 Administrative Code 97.1001 and 74.28 and Education Code sections 28.006, 29.062 and 38.003 do not preclude or substitute for a sanction under another provision of Chapter 97, Subchapter EE.

Actions taken under this provision do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by TEA, such as those described in 19 Administrative Code 89.1076 (relating to Interventions and Sanctions) and expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documen-

tation verifying implementation of intervention activities and/or an improvement plan, and submission of district/program data.

19 TAC 97.1071(e)-(k)

[See AIE for information regarding TEA's process for investigating and issuing findings regarding credible allegations of violations of the Individuals with Disabilities Education Act (IDEA), Part B, and other supervision and monitoring activities under 19 Administrative Code 97.1071(a)-(b).]

Intervention Pause

Except as otherwise provided by 19 Administrative Code 97.1062 and unless extended by the commissioner, TEA will cease to enforce the interventions under Education Code 39A.101-39A.111 until conclusion of the second consecutive school year of operation under:

1. A partnership as defined by 19 Administrative Code 97.1077(a)(2), (b), or (c) of this title [see ELA]; or
2. Designation as a mathematics innovation zone under Education Code 28.020 and applicable rules.

Any intervention or sanction not covered by the provision above shall continue.

If a campus ceases to qualify for the intervention pause at any point during a school year, TEA will resume previously ordered interventions and sanctions, order interventions and sanctions based on the rating from that school year, and count that rating for purposes of consecutive years of performance.

19 TAC 97.1062

Failure to Submit Emergency Operations Plan

If TEA receives notice from the Texas School Safety Center of a district's failure to submit a multihazard emergency operations plan [see CKC], the commissioner may appoint a conservator for the district under Education Code Chapter 39A. The conservator may order the district to adopt, implement, and submit a multihazard emergency operations plan. If a district fails to comply with a conservator's order to adopt, implement, and submit a multihazard emergency operations plan within the time frame imposed by the commissioner, the commissioner may appoint a board of managers under Education Code Chapter 39A to oversee the operations of the district. *Education Code 37.1082(a)-(b)*

Note: The following provisions apply to a district with a central administrative office that is located in a county with a population of more than two million and that has a student enrollment that is more than 125,000 and less than 200,000, and that is operating under a turnaround plan.

Student Board Member

Notwithstanding Education Code 11.051(b) (number of trustees on a school board), the board may adopt a resolution establishing as a nonvoting member a student trustee position. If a board adopts such a resolution, the board shall adopt a policy addressing the topics specified in statute. A student trustee may not participate in a closed session of a board meeting [see BEC] in which any issue related to a personnel matter is considered. *Education Code 11.0511(a)-(f)*

Special Investigations

The commissioner may authorize a special investigation:

1. When excessive numbers of absences of students eligible to be tested on state assessment instruments are determined;
2. When excessive numbers of allowable exemptions from the required state assessment are determined;
3. In response to complaints to the Texas Education Agency (TEA) of alleged violations of civil rights or other requirements imposed on the state by federal law or court order;
4. In response to established compliance reviews of the district's financial accounting practices and state and federal reporting requirements;
5. When extraordinary numbers of student placements in disciplinary alternative education programs, other than placements under Education Code 37.006 and 37.007, are determined;
6. In response to an allegation involving a conflict between members of the board or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by the Education Code. If TEA's findings indicate the board has observed a lawfully adopted policy, TEA may not substitute its judgment for that of the board;
7. When excessive numbers of students in special education programs are assessed through modified assessment instruments;
8. In response to an allegation regarding, or an analysis using a statistical method result indicating, a possible violation of an assessment instrument security procedure;
9. When a significant pattern of decreased academic performance has developed as a result of the promotion in the preceding two school years of students who did not perform satisfactorily on the state assessments;
10. When excessive numbers of students eligible to enroll fail to complete an Algebra II course or any other advanced course as determined by the commissioner;
11. When resource allocation practices indicate a potential for significant improvement in resource allocation;
12. When a disproportionate number of students of a particular demographic group is graduating with a particular endorsement;

13. When an excessive number of students is graduating with a particular endorsement;

14. When a school district for any reason fails to produce, at the request of TEA, evidence or an investigation report relating to a person who is under investigation by the State Board for Educator Certification or TEA;

15. When a school district for any reason fails to timely submit a report required under Education Code 22A regarding a person who is required to be reported to the State Board for Educator Certification or TEA;

16. When 10 percent or more of the students graduating in a particular school year from a particular high school campus are awarded a diploma based on the determination of an individual graduation committee under Education Code 28.0258;

17. In response to a complaint with respect to alleged inaccurate data that is reported through PEIMS or through other reports required by state or federal law or rule or court order and that is used by TEA to make a determination relating to public school accountability, including accreditation, under Education Code Chapter 39;

18. In response to repeated complaints submitted to TEA concerning imposition of excessive paperwork requirements on classroom teachers; or

19. As the commissioner otherwise determines necessary.

Education Code 39.003(a), (c)

TEA shall adopt written procedures for conducting special investigations, including procedures that allow TEA to obtain information from district employees in a manner that prevents a district or campus from screening the information. *Education Code 39.004(a)*

Note: The procedures for conducting a special investigation, holding a hearing following an investigation, the process for commissioner determinations, and judicial appeal are described in Education Code 39.004-.007.

Commissioner Action

Based on the results of a special investigation, the commissioner may:

1. Take appropriate action under Education Code Chapter 39A, [see AIC];

2. Lower the district's accreditation status or a district's or campus's performance rating; or

3. Take action under both items 1 and 2 above.

Education Code 39.003(d)

At any time before issuing a report with the TEA's final findings, the commissioner may defer taking the above action until:

1. A person who is a third party, selected by the commissioner, has reviewed programs or other subjects of a special investigation and submitted a report identifying problems and proposing solutions;

2. A district completes a corrective action plan developed by the commissioner; or

3. The completion of actions under both items 1 and 2 above.

Education Code 39.003(e)

Based on the results of an action taken above, the commissioner may decline to take the deferred action. *Education Code 39.003(f)*

Note: The procedures for an informal review or hearing following an investigation are described in 19 Administrative Code Chapter 157, Subchapter EE.

Monitoring Reviews

In accordance with Education Code 7.028(a), TEA may monitor compliance with requirements applicable to a process or program provided by a district, campus, or program, only as necessary to ensure:

1. Compliance with federal law and regulations;

2. Financial accountability, including compliance with grant requirements;

3. Data integrity for purposes of:

   a. The Public Education Information Management System (PEIMS); and

   b. Accountability under Education Code Chapter 39 and 39A; and

4. Qualification for funding under Education Code Chapter 48.

The board has primary responsibility for ensuring that the district complies with all applicable requirements of state educational programs.

Education Code 7.028

Compliance Monitoring Activities

Districts are subject to general supervision and monitoring activities for compliance with state law and federal regulation, implemented by TEA under 34 C.F.R. 300.600-.609 [see Supervision Under IDEA, below], and review of program implementation and effectiveness within certain special populations of students.

Activities may include:

1. Random, targeted, or cyclical reviews authorized under Education Code 39.056 (monitoring reviews), conducted remotely or on-site to identify problems implementing state and federal requirements and to provide support for development of reasonable and appropriate strategies to address identified problems; and/or

2. Intensive or special investigative remote or on-site reviews authorized under Education Code 39.003 and 39.004.

Activities described above are applicable for compliance with requirements for reading diagnosis in Education Code 28.006 [see EKC], dyslexia and related disorders in Education Code 38.003 and 19 Administrative Code 74.28 [see EHB], and program effectiveness for emergent bilingual students in Education Code 29.062.

19 TAC 97.1071(b)-(d)

Notice

TEA shall give written notice to the superintendent and the board of trustees of any impending monitoring review. *Education Code 39.056(d)*

Conducting the Review

A monitoring review may include desk reviews and on-site visits, including random on-site visits. In conducting a monitoring review, TEA may obtain information from administrators, other district employees, parents of students enrolled in the district, and other persons as necessary. *Education Code 39.056(c), (g)*

Converting to a Special Investigation

The commissioner may at any time convert a monitoring review to a special investigation under Education Code 39.003, provided the commissioner promptly notifies the district of the conversion. *Education Code 39.056(h)*

Improvements

TEA shall report in writing to the superintendent and president of the board and shall make recommendations concerning any necessary improvements or sources of aid such as regional education service centers. A district that takes action with regard to the rec-

ommendations provided by TEA shall make a reasonable effort to seek assistance from a third party in developing an action plan to improve district performance using improvement techniques that are goal-oriented and research-based. *Education Code 39.056(e)-(f)*

Appeals

A decision by the commissioner under Education Code Chapter 39 or 39A is final and may not be appealed unless an applicable provision of Chapter 39 or 39A provides otherwise. *Education Code 39A.906* [See AIC]

Compliance Investigation

A compliance investigation is an investigation by TEA of a state education grant recipient to determine compliance with the statutory or rule requirements of a state education program. A compliance investigation is not a special investigation subject to Education Code 39.003 and 39.004 (above). *19 TAC 102.1401(a)(1)*

Supervision Under IDEA

In exercising its general supervision authority under 34 C.F.R. sections 300.149 and 300.600, TEA has established a process that provides for the investigation and issuance of findings regarding credible allegations of violations of the Individuals with Disabilities Education Act (IDEA), Part B, or a state statute or administrative rule created to implement IDEA, that arise from an area of concern. The following guidelines shall apply to this process.

Definitions

“Area of concern” means that TEA has been made aware of an allegation regarding a violation of, or noncompliance with, a requirement of IDEA, Part B, or a state special education law or administrative rule.

“Credible allegation” means that TEA has determined that an allegation arising from an area of concern is credible enough to investigate further to determine if a violation or noncompliance has occurred.

Credibility Determination

Information and awareness of an area of concern may arise directly from TEA or from external sources.

TEA will engage in a process to determine if an area of concern is determined to be a credible allegation, and, if determined credible, TEA will initiate an investigation to determine if findings of noncompliance will be issued.

TEA will generally not engage in the process described below to determine if an area of concern is a credible allegation if it is a media report, social media post, or an anonymous report, unless TEA receives corroborating information and facts that a specific violation of state or federal law or rule has occurred if the allegation were to be confirmed true.

When an individual or organization reports a special education area of concern, TEA may direct the individual or organization to the established dispute resolution processes. Depending on the frequency or specificity of the type of allegation made, TEA may engage in a process to determine credibility of the allegation.

Process

The process to determine if an area of concern is a credible allegation may include one or more of the following actions:

1. Reviewing existing citations of noncompliance or any noncompliance identified within the last two school years on the same or similar alleged violation;
2. Reviewing filed state complaints that are in process of being investigated or that have been substantiated within the last two school years on the same or similar alleged violation;
3. Reviewing due process hearing decisions issued within the last two years in which the hearing officer's final written decision contains a finding of noncompliance on the same or similar alleged violation;
4. Gathering evidence from groups that represent or advocate for families and communities served by the district;
5. Reviewing and analyzing available student- or district-level data that relate to the alleged violation;
6. Reviewing and analyzing fiscal and program information, such as grant applications, contracts, self-assessments, and other special education documents submitted to TEA by the district; and
7. Any other activity or measure used to gather evidence within TEA's general supervision and monitoring authority.

The investigation to determine if a credible allegation will result in the issuance of findings will include contacting the school district that is the subject of the allegation and requesting a response from the school district. Additional investigative actions may include one or more of the following:

1. Conducting interviews with the district, staff, parents, or students;
2. A referral for review or investigation by any other appropriate unit or division within TEA;
3. Utilizing the review and analysis of the activities conducted during the review process in this provision to determine if noncompliance is found; and

4. Any other activity or measure within TEA's general supervision and monitoring authority.

Intervention and Sanction

TEA may apply any intervention or sanction within its authority if noncompliance or a violation is substantiated, including those described in 19 Administrative Code 89.1076 [see AIC].

19 TAC 97.1071(l)

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 B: LOCAL GOVERNANCE

BA	BOARD LEGAL STATUS
BAA	Powers and Duties
BB	BOARD MEMBERS
BBA	Eligibility/Qualifications
BBB	Elections
BBBA	Conducting Elections
BBBB	Post-election Procedures
BBBC	Campaign Finance
BBBD	Campaign Ethics
BBC	Vacancies and Removal from Office
BBD	Training and Orientation
BBE	Authority
BBF	Ethics
BBFA	Conflict of Interest Disclosures
BBFB	Prohibited Practices
BBG	Compensation and Expenses
BBH	Conventions, Conferences, and Workshops
BBI	Technology Resources and Electronic Communications
BC	BOARD MEMBERSHIPS
BD	BOARD INTERNAL ORGANIZATION
BDA	Officers and Officials
BDAA	Duties and Requirements of Board Officers
BDAE	Duties and Requirements of Depository
BDB	Board Committees
BDD	Attorney
BDE	Consultants
BDF	Advisory Committees
BE	BOARD MEETINGS
BEC	Closed Meetings
BED	Public Participation
BEE	News Coverage
BEF	Staff Participation
BF	BOARD POLICIES
BG	BOARD SELF-EVALUATION
BI	ADMINISTRATIVE GOALS AND OBJECTIVES

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SECTION B: LOCAL GOVERNANCE

BJ	SUPERINTENDENT
BJA	Qualifications and Duties
BJB	Recruitment and Appointment
BJC	Contract
BJCA	Travel
BJCB	Professional Development
BJCC	Consulting
BJCD	Evaluation
BJCE	Suspension/Termination During Contract
BJCF	Nonrenewal
BJCG	Resignation
BK	ADMINISTRATIVE ORGANIZATION
BKA	Organization Charts
BKB	Line and Staff Relations
BM	ADMINISTRATIVE COUNCILS, CABINETS, AND COMMITTEES
BP	ADMINISTRATIVE REGULATIONS
BQ	PLANNING AND DECISION-MAKING PROCESS
BQA	District-Level
BQB	Campus-Level
BR	REPORTS
BT	PROHIBITION ON DIVERSITY, EQUITY, AND INCLUSION ACTIVITIES

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Eligibility

To be eligible to be a candidate for, or elected or appointed to, the office of school board member, a person must:

1. Be a United States citizen.
2. Be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable.
3. Have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote.
4. Have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities [but see Ineligibility below].
5. Have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:
    a. For an independent candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot.
    b. For a write-in candidate, the date of the election at which the candidate's name is written in.
    c. For an appointee to an office, the date the appointment is made.
6. Be registered to vote in the territory from which the office is elected on the date described at item 5, above.

Election Code 1.020, 141.001(a); Gov't Code 601.009; Tex. Const. Art. XVI, Sec. 14

Qualified Voter

A person may not be elected trustee of an independent school district unless the person is a qualified voter. *Education Code 11.061(b)*

"Qualified voter" means a person who:

1. Is 18 years of age or older;

2. Is a United States citizen;

3. Has not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote;

4. Has not been finally convicted of a felony or, if so convicted, has fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or been pardoned or otherwise released from the resulting disability to vote;

5. Is a resident of this state; and

6. Is a registered voter.

Election Code 1.020, 11.002 [See *Atty. Gen. Op. KP-0251 (2019)* (concluding that the restoration of a convicted felon's qualification to vote under Election Code 11.002(a)(4)(A) after fully discharging a sentence does not restore the person's eligibility to hold public office under Election Code 141.001(a)(4))]

Residence

"Residence" Defined

In the Election Code, "residence" means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence. A person may not establish residence for the purpose of influencing the outcome of a certain election. A person does not lose the person's residence by leaving to go to another place for temporary purposes only. A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home. A person may not establish a residence at any place the person has not inhabited. A person may not designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain. *Election Code 1.015*

Note: The issue of whether a candidate has satisfied residency requirements should be judicially determined. *State v. Fischer, 769 S.W.2d 619 (Tex. App.—Corpus Christi 1989, writ dism'd w.o.j.)*

Intent to Return

For purposes of satisfying the continuous residency requirement, a person who claims an intent to return to a residence after a temporary absence may establish that intent only if the person has made a reasonable and substantive attempt to effectuate that intent and has a legal right and practical ability to return to the residence. This does not apply to a person displaced from the person's residence

due to a declared local, state, or national disaster. *Election Code 141.001(a-1)-(a-2)*

Single-Member Districts — A candidate for board member representing a single-member district must be a resident of the district the candidate seeks to represent. *Education Code 11.052(g)*

Ineligibility

Felony Conviction — A person is ineligible to serve as a member of the board of a district if the person has been convicted of a felony or an offense under Penal Code 43.021 (solicitation of prostitution). *Education Code 11.066*

Registration as Sex Offender — A person is not eligible to serve as a trustee of an independent school district if the person is required to register as a sex offender under Chapter 62, Code of Criminal Procedure. *Education Code 11.061(b-1)*

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Membership

The board consists of the number of members that the district had on September 1, 1995. *Education Code 11.051(b)*

Increase in Membership

A board that has three or five members may by resolution increase the membership to seven. A board that votes to increase its membership must consider whether the district would benefit from also adopting a single-member election system under Education Code 11.052. [See Single-Member Districts, below.]

A resolution increasing the number of trustees takes effect with the second regular election of trustees that occurs after the adoption of the resolution. The resolution must provide for a transition in the number of trustees so that when the transition is complete, trustees are elected as provided by Education Code 11.059 (terms).

Education Code 11.051(c)

Terms

A trustee of a district serves a term of three or four years.

Elections for trustees with three-year terms shall be held annually. The terms of one-third of the trustees, or as near to one-third as possible, expire each year.

Elections for trustees with four-year terms shall be held biennially. The terms of one-half of the trustees, or as near to one-half as possible, expire every two years.

Board policy must state the schedule on which specific terms expire.

Education Code 11.059

Changing Term Lengths

Not later than December 31, 2030, the board of trustees may adopt a resolution changing the length of the terms of its trustees until the date the November election is canvassed. The resolution must provide for staggered terms of either three or four years and specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for trustees that occurs after the board adopts the resolution, and a trustee who serves on the date the resolution is adopted shall serve the remainder of that term. *Education Code 11.059(e)*

Note: For website posting requirements regarding trustee information, see CQA.

Uniform Election Dates

Each general or special election of board members shall be on one of the following dates:

1. The first Saturday in May.
2. The first Tuesday after the first Monday in November.

Election Code 41.001(a)

Changing Uniform Election Date

The board of an independent school district that holds its general election for officers on a date other than the November uniform election date may change the date on which it holds its general election for officers to the November uniform election date. *Election Code 41.0052*

Joint Elections

Required

A district trustee election shall be held on the same date as:

1. The election for the members of the governing body of a municipality located in the district;
2. The general election for state and county officers, which is held on the first Tuesday after the first Monday in November in even-numbered years under Election Code 41.002;
3. The election for the members of the governing body of a hospital district, if the school district:
    a. Is wholly or partly located in a county with a population of less than 50,000 that is adjacent to a county with a population of more than three million; and
    b. Held its election for board members jointly with the election for the members of the governing body of the hospital district before May 2007; or
4. The election for the members of the governing board of a public junior college district in which the school district is wholly or partly located.

Elections held on the same date as provided above shall be held as a joint election under Election Code Chapter 271, and the voters shall be served by common polling places consistent with Election Code 271.003(b).

Education Code 11.0581(a)-(c)

A board may enter into an agreement with another political subdivision holding an election on the same day in all or part of the same

county to hold the elections jointly. The terms of a joint election agreement must be stated in an order, resolution, or other official action adopted by the board. *Election Code 271.002*

Methods of Election — Options

In a district in which the positions of trustees are not designated by number or in which the trustees are not elected from single-member trustee districts, the candidates receiving the highest number of votes shall fill the positions the terms of which are normally expiring. *Education Code 11.057(b)*

At Large

Position or Place

The positions on the board shall be designated by number in any district in which the board by resolution orders that all candidates for trustee be voted on and elected separately for positions on the board and that all candidates be designated on the official ballot according to the number of the positions for which they seek election.

Not later than the 60th day before the date of an election, the board must make the resolution and number the positions on the board in the order in which the terms of office expire. Once a board has ordered the election of trustees by numbered positions, neither the board nor their successors may rescind the action.

Education Code 11.058(c)-(f)

Single-Member Districts

On Board's Motion

Except as provided below, the board, on its own motion, may order that trustees of the district are to be elected from single-member districts or that not fewer than 70 percent of the members of the board are to be elected from single-member districts with the remaining board members to be elected from the district at large.

If a majority of the area of a district is located in a county with a population of less than 10,000, a board, on its own motion, may order that trustees of the district are to be elected from single-member districts or that not fewer than 50 percent of the members of the board are to be elected from single-member districts with the remaining board members to be elected from the district at large.

Before adopting an order, a board must:

1. Hold a public hearing at which registered voters of a district are given an opportunity to comment on whether or not they favor the election of trustees in the manner proposed by the board; and
2. Publish notice of the hearing in a newspaper that has general circulation in the district, not later than the seventh day before the date of the hearing.

An order adopted by the board must be entered not later than the 120th day before the date of the first election at which all or some of the trustees are elected from single-member districts authorized by the order.

Education Code 11.052(a)-(d)

By Voter Petition

If at least 15 percent or 15,000 of the registered voters of the district, whichever is less, sign and present to the board a petition requesting submission to the voters of the proposition that trustees be elected in a specific manner, which must be generally described on the petition and which must be a manner of election the board could have ordered on its own motion, the board shall order that the appropriate proposition be placed on the ballot at the first regular election of trustees held after the 120th day after the date the petition is submitted to the board. The proposition must specify the number of trustees to be elected from single-member districts. Beginning with the first regular election of trustees held after an election at which a majority of the registered voters voting approve the proposition, trustees shall be elected in the manner prescribed by the approved proposition. *Education Code 11.052(e)*

Board Member Districts

If single-member districts are adopted or approved by either method described above, the board shall divide the district into the appropriate number of trustee districts, based on the number of members that are to be elected from single-member districts, and shall number each trustee district. The trustee districts must be compact and contiguous and must be as nearly as practicable of equal population. In a district with 150,000 or more students in average daily attendance, the boundary of a trustee district shall not cross a county election precinct boundary except at a point at which the district boundary crosses the county election precinct boundary. Trustee districts must be drawn not later than the 90th day before the date of the first election of trustees from those districts. *Education Code 11.052(f)*

Residency for First Election

Residents of each trustee district are entitled to elect one trustee to the board. A trustee elected to represent a trustee district at the first election of members must be a resident of the district the trustee represents not later than the 90th day after the date election returns are canvassed, or the 60th day after the date of a final judgment in an election contest filed concerning that trustee district. A trustee vacates the office if the trustee fails to move into the district the trustee represents within the time provided. [For more information on residency, see BBA and BBC.] *Education Code 11.052(g)*

Number and Term

At the first election at which some or all of the trustees are elected from single-member trustee districts and after each redistricting, all positions on a board shall be filled. The trustees then elected shall draw lots for staggered terms as provided by Education Code 11.059 (terms). *Education Code 11.052(h)*

Redistricting

Not later than the 90th day before the date of the first regular board election at which trustees may officially recognize and act on the last preceding federal census, a board shall redivide a district into the appropriate number of trustee districts if the census data indicates that the population of the most populous district exceeds the population of the least populous district by more than 10 percent. Redivision of a district shall be in the manner provided above at Board Member Districts. *Education Code 11.052(i)*

Phase-in Option

The board of a district that adopts a redistricting plan may provide for the trustees in office when the plan is adopted or the district is redistricted to serve for the remainder of their terms in accordance with this provision. The trustee district and any at-large positions provided by the district's plan shall be filled as the staggered terms of trustees then in office expire. Not later than the 90th day before the date of the first election from trustee districts and after each redistricting, a board shall determine the order in which the positions will be filled. *Education Code 11.053*

Boundary Change Notice

A district that changes its boundaries or the boundaries of districts used to elect members to the board shall not later than the 30th day after the date the change is adopted:

1. Notify the voter registrar of the county in which the area subject to the boundary change is located of the adopted boundary change; and

2. Provide the voter registrar with a map of an adopted boundary change in a format that is compatible with the mapping format used by the registrar's office.

Election Code 42.0615

Methods of Voting — Options

Plurality

Except as otherwise provided at Majority, below, to be elected to a public office, a candidate elected at large, at large by position, or by single-member districts must receive more votes than any other candidate for the office. *Education Code 11.057(a), (b); Election Code 2.001*

Cumulative

The board of a district that elects its trustees at large or at large by position may order that elections for trustees be held using the cumulative voting procedure.

If a board adopts an order requiring the use of cumulative voting, only the board member positions that were scheduled to be filled at the election are filled through the use of cumulative voting.

At an election at which more than one board member position is to be filled, all of the positions that are to be filled at the election shall be voted on as one race by all the voters of a district. Each voter is entitled to cast a number of votes equal to the number of positions to be filled at the election.

A voter may cast one or more of the specified number of votes for any one or more candidates in any combination. Only whole votes may be cast and counted. If a voter casts more than the number of votes to which the voter is entitled in the election, none of the voter's votes may be counted in that election. If a voter casts fewer votes than entitled, all of the voter's votes are counted in that election.

The candidates who are elected are those, in the number to be elected, receiving the highest number of votes.

A district that adopts an order requiring the use of cumulative voting may not elect its members by position as provided by Education Code 11.058.

Education Code 11.054

Majority

The board of a district in which the positions of trustees are designated by number or in which the trustees are elected from single-member districts may provide by resolution, not later than the 180th day before the date of an election, that a candidate must receive a majority of the votes cast for a position or in a trustee district, as applicable, to be elected.

The resolution is effective until rescinded by a subsequent resolution adopted not later than the 180th day before the date of the first election to which the rescission applies.

Education Code 11.057(c)

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Notice of Polling Place

Any written notice of a polling place location must state the building name, if any, and the street address, including the suite or room number, if any, of the polling place. *Election Code 1.021*

Election Order

The board shall order an election. An election to be held on a uniform election date shall be ordered not later than the 78th day before election day. *Election Code 3.004, .005*

Each election order must state:

1. The date of the election;
2. The offices or measures to be voted on;
3. The early voting clerk's official mailing address or street address at which the clerk may receive delivery by common or contract carrier, if different, phone number, email address, and internet website, if the early voting clerk has an internet website;
4. The location of the main early voting polling place;
5. The dates and hours for early voting; and
6. The dates and hours of any Saturday and Sunday early voting.

Election Code 3.006, 83.010, 85.004, .007

A board shall preserve the election order for the period for preserving the precinct election records. The date and nature of each election shall be entered in the official records of the board. For an election on a measure, the entry must include a description of the measure. *Election Code 3.008*

Failure to Order an Election

Failure to order a general election does not affect the validity of the election. *Election Code 3.007*

Election Notice

Contents

Notice of the election must state:

1. The nature and date of the election;
2. The location of each polling place;

3. The hours the polls will be open;

4. The internet website of the authority conducting the election;

5. The early voting clerk's official mailing address or street address at which the clerk may receive delivery by common or contract carrier, if different, phone number, email address, and internet website, if the early voting clerk has an internet website;

6. The location of the main early voting polling place; and

7. The dates and hours for early voting, including the dates and hours of any Saturday and Sunday early voting.

Election Code 4.004(a), 83.010, 85.004, .007

Notice of Special Election

The notice of a special election must also state each office to be filled or the proposition stating each measure to be voted on. *Election Code 4.004(b)*

Publication

Notice of the election shall be published at least once, not earlier than the 30th day or later than the 10th day before election day, in a newspaper published within the district's boundaries or in a newspaper of general circulation in the district if none is published within the district's boundaries. The board shall retain a copy of the published notice that contains the name of the newspaper and the date of publication. *Election Code 4.003(a)(1), (c), .005(a)*

Posting

In addition to the notice described above, not later than the 21st day before election day, a county shall post a copy of a notice of election provided to the county [see Notice to County Clerk and Voter Registrar, below], which must include the location of each polling place, on the county's internet website, if the county maintains a website. A district may post a copy of the notice on the bulletin board used for posting notices of the meetings of the board. If a county does not maintain a website, the district shall post a copy of the notice of the election on the bulletin board used for posting notice of meetings of the board. The notice must remain posted continuously through election day. The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the board after the last posting is made. *Election Code 4.003(b), .005(b)*

A district that maintains a website must post the notice described above on the internet website of the district. *Election Code 85.007(d)*

Note: For additional website posting requirements regarding the date and location of the next election, see CQA.

Notice to County Clerk and Voter Registrar

The board shall deliver notice of the election, including the location of each polling place, to the county clerk and voter registrar of each county in which the district is located not later than the 60th day before election day. The county clerk shall post notice of the election, including the location of each polling place, on the county's internet website, if the county maintains a website, as provided by Election Code 4.003(b). *Election Code 4.008(a)* [See Posting, above]

Notice to Election Judge

Not later than the 15th day before election day or the seventh day after the date the election is ordered, whichever is later, the board shall deliver to the presiding judge of each election precinct in which the election is to be held in the district a written notice of:

1. The nature and date of the election;
2. The location of the polling place for the precinct served by the judge;
3. The hours that the polls will be open;
4. The judge's duty to hold the election in the precinct specified by the notice; and
5. The maximum number of clerks that the judge may appoint for the election.

Election Code 4.007

Failure to Give Notice of Election

Failure to give notice of a general election does not affect the validity of the election. *Election Code 4.006*

Internet Posting

Not later than the 21st day before election day, a district that holds an election and maintains an internet website shall post on the public internet website for the district:

1. The date of the next election;
2. The location of each polling place;
3. Each candidate for an elected office on the ballot; and
4. Each measure on the ballot.

Election Code 4.009(b)

Filing Information

Notice to Candidates

A district shall post notice of the dates of the filing period in a public place in a building in which the district has an office not later than the 30th day before the first day on which a candidate may file an application for a place on the ballot. A district shall designate an email address in the notice for the purpose of filing an application for a place on the ballot under Election Code 143.004, below. *Election Code 141.040*

Note: For additional website posting requirements regarding the requirements and deadline for filing for candidacy of board member, see CQA.

Application

To be entitled to a place on the ballot, a candidate must make an application for a place on the ballot. An application, other than an application required to be accompanied by fee, may be filed through email transmission of the completed application in a scanned format to the email address designated by the filing authority in the notice required under Election Code 141.040, above. *Election Code 143.004*

A candidate application for a place on the ballot must:

1. Be in writing;
2. Be signed and sworn to before a person authorized to administer an oath in this state by the candidate and indicate the date that the candidate swears to the application;
3. Be timely filed with the appropriate authority; and
4. Include all statutorily required information.

Election Code 141.031, .039

Deadline

An application for a place on the ballot may not be filed earlier than the 30th day before the date of the filing deadline.

An application must be filed not later than 5:00 p.m. of the 78th day before the date of the election for an election to be held on a uniform election date.

Education Code 11.055(a); Election Code 144.005(a), (d)

Death of Candidate

If a candidate dies on or before the deadline for filing an application for a place on the ballot:

1. The authority responsible for preparing the ballots may choose to omit the candidate from the ballot; and
2. If the authority omits the candidate's name under item 1, the filing deadline for an application for a place on the ballot for

the office sought by the candidate is extended until the fifth day after the filing deadline.

Election Code 145.098(b)

Write-in Candidate

A declaration of write-in candidacy must be filed not later than 5:00 p.m. of the 74th day before election day for an election to be held on a uniform election date. *Education Code 11.056(b); Election Code 146.054*

Special Election

An application for a place on a special election ballot may not be filed before the election is ordered.

An application must be filed not later than:

1. 5:00 p.m. of the 62nd day before election day if election day is on or after the 70th day after the election is ordered; or
2. 5:00 p.m. of the 40th day before election day if election day is on or after the 46th day and before the 70th day after the date the election is ordered.

Exception

For a special election to be held on the date of the general election for state and county officers (the first Tuesday after the first Monday in November in even-numbered years under Election Code 41.002), the day of the filing deadline is 6:00 p.m. of the 75th day before election day.

Write-in Candidate

A declaration of write-in candidacy for a special election must be filed not later than the filing deadline.

Election Code 201.054

Delivery or Submission of Documents

When the Election Code provides for the delivery, submission, or filing of an application, notice, report, or other document or paper with an authority having administrative responsibility under that code, a delivery, submission, or filing with an employee of the district at the district's usual place for conducting official business constitutes filing with the district. The district may accept the document or paper at a place other than the district's usual place for conducting official business.

A delivery, submission, or filing of a document or paper under the Election Code may be made by personal delivery, mail, telephonic facsimile machine, email, or any other method of transmission.

Election Code 1.007

Election of Unopposed Candidate

Certification of Unopposed Status

The authority responsible for having the official ballot prepared shall certify in writing that a candidate is unopposed for election to an office if, were the election held, only the votes cast for that candidate in the election for that office may be counted. The certification shall be delivered to the board as soon as possible after the filing deadlines for placement on the ballot and list of write-in candidates.

A certification may be made following the filing of a withdrawal request by a candidate after the deadline prescribed by Election Code 145.092 if:

1. The withdrawal request is valid except for the untimely filing;
2. Ballots have not been prepared; and
3. The other conditions for certification are met.

A certification under these circumstances shall be delivered to the board as soon as possible.

Election Code 2.052

Special Election

For purposes of these provisions, a special election of a district is considered to be a separate election with a separate ballot from a general election for board members or another special election of the district held at the same time. *Election Code 2.051(a)*

Single-Member Districts

In the case of an election in which any members of the board are elected from single-member districts, these provisions apply to the election in a particular single-member district if each candidate for an office that is to appear on the ballot in that single-member district is unopposed and no opposed at-large race is to appear on the ballot. These provisions apply to an unopposed at-large race in such an election regardless of whether an opposed race is to appear on the ballot in a particular territorial unit. *Election Code 2.051(b)*

Action on Certification

On receipt of the certification, the board by order or ordinance shall declare each unopposed candidate elected to office. If a declaration is made, the election is not held.

If no election is to be held on election day by the district, a copy of the order or ordinance shall be posted on election day at each polling place used or that would have been used in the election.

The ballots used at a separate election held at the same time as an election that would have been held if the candidates were not declared elected shall include the offices and names of the candidates declared elected listed separately after the measures or contested races in the separate election under the heading

"Unopposed Candidates Declared Elected." The candidates shall be grouped in the same relative order prescribed for the ballot generally. No votes are cast in connection with the unopposed candidates.

Election Code 2.053

[See BBBB regarding issuance of a certificate of election to an unopposed candidate declared elected and qualification for office.]

Ballot

The ballot shall be prepared in accordance with Election Code Chapter 52.

Drawing

The district shall conduct a drawing to determine the order of the candidates' names in an election at which the names of more than one candidate for the same office are to appear on the ballot. The district shall post in the district's office a notice of the date, hour, and place of the drawing. The notice must remain posted continuously for 72 hours immediately preceding the scheduled time of the drawing. The district shall provide notice of the date, hour, and place of the drawing to each candidate by:

1. Written notice:
    a. Mailed to the address stated on the candidate's application for a place on the ballot, not later than the fourth day before the date of the drawing; or
    b. Provided at the time the candidate files an application with the district;
2. Telephone, if a telephone number is provided on the candidate's application for a place on the ballot; or
3. Email, if an email address is provided on the candidate's application for a place on the ballot.

Each candidate affected by a drawing is entitled to be present or have a representative present at the drawing.

Election Code 52.093-.094 [See BBBB regarding ballot order in a runoff election or election to resolve a tie.]

Ballots for an election by position must clearly show the position for which each person is a candidate. A board shall arrange by lot the names of the candidates for each position. *Education Code 11.058(g)*

Election Services Contract

The county election officer, as defined by Election Code 31.091(1), may contract with the board of a district situated wholly or partly in the county served by the officer to perform election services, as

provided by Election Code Chapter 31, Subchapter D, in any one or more elections ordered by the board.

If requested to do so by a district, the county elections administrator, as defined under Election Code Chapter 31, Subchapter B, shall enter into a contract to furnish the election services requested in accordance with a cost schedule agreed on by the contracting parties. A county elections administrator is not required to enter into a contract to furnish elections services for an election held on the first Saturday in May in an even-numbered year.

Election Code 31.092, .093, 41.001(d)

Election Judges and Clerks

By written order, a board shall appoint a presiding election judge and an alternate presiding judge for each election precinct in which an election is held. A board shall prescribe the maximum number of clerks that each presiding judge may appoint for each election. The judges and clerks shall be selected and serve in accordance with Election Code Chapter 32. *Election Code 32.001(a), .008, .033*

Confidentiality

An email address or personal phone number of an election judge or clerk collected or maintained by the authority conducting the election is confidential and does not constitute public information for purposes of Government Code Chapter 552 (Public Information Act).

Exception

An email address or phone number of an election judge or clerk shall be made available on request to:

1. Any entity eligible to submit lists of election judges or clerks for that election; or
2. The state executive committee of a political party with a county chair eligible to submit lists of election judges or clerks for that election.

Election Code 32.076

Polling Places

A board shall designate polling places for election day and early voting. Each polling place shall be accessible to and usable by the elderly and persons with physical disabilities. *Election Code 43.004, .034, Ch. 85 (early voting by personal appearance)*

In an election held on the November uniform election date, a district shall use the regular county election precincts. The district shall designate as the polling places for the election the regular county polling places in the county election precincts that contain territory from the district. *Election Code 42.002(a)(5), .0621, 43.004(b)*

Electioneering

A person commits an offense if, during the voting period and within 100 feet of an outside door through which a voter may enter the building in which a polling place is located or within 20 feet of a parking space designated for curbside voting, the person loiters or electioneers for or against any candidate, measure, or political party.

A district that owns or controls a public building being used as a polling place or early voting polling place may not, at any time during the voting period or early voting period, as applicable, prohibit electioneering on the building's premises outside of the area described above, but may enact reasonable regulations concerning the time, place, and manner of electioneering.

Definitions

"Electioneering" includes the posting, use, or distribution of political signs or literature. The term does not include the distribution of a notice of a party convention authorized under Election Code 172.1114.

"Voting period" means the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later.

"Early voting period" means the period prescribed by Election Code 85.001.

Election Code 61.003, 85.036

Early Voting

In each election, early voting shall be conducted by personal appearance at an early voting polling place and by mail, in accordance with Election Code Title 7, Chapters 81-114. *Election Code 81.001*

November Early Voting Polling Places

In an election on the November uniform election date in which the district is not holding a joint election with a county and has not executed a contract with a county elections officer under which the district and the county share early voting polling places, the district:

1. Shall designate as an early voting polling place for the election an eligible county polling place located in the district; and

2. May not designate as an early voting polling place a location other than an eligible county polling place unless each eligible county polling place located in the district is designated as an early voting polling place by the district.

"Eligible county polling place" means an early voting polling place established by a county.

Election Code 85.010(a), (a-1), (b)

Temporary Branch Days and Hours

Early voting by personal appearance at each temporary branch polling place shall be conducted on the days that voting is required to be conducted at the main early voting polling place under Election Code 85.005 and remain open for at least:

1. Eight hours each day; or
2. Three hours each day if the city or county clerk does not serve as the early voting clerk for the territory holding the election and the territory has fewer than 1,000 registered voters.

The authority authorized under Election Code 85.006 to order early voting on a Saturday or Sunday may also order, in the manner prescribed by that section, early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places.

Election Code 85.064

Records

Branch Daily Register

The early voting clerk shall provide, in a downloadable database format, a current copy of the register for posting on the internet website of the district, if the district maintains a website, each day early voting is conducted. At a minimum, the voter registration number for each voter listed in the register must be posted. *Election Code 85.072*

Early Voting Rosters

The early voting clerk shall maintain for each election a roster listing each person who votes an early voting ballot by personal appearance and a roster listing each person to whom an early voting ballot to be voted by mail is sent. Information on the roster for a person who votes an early voting ballot by personal appearance shall be made available for public inspection as provided below not later than 11 a.m. on the day after the date the information is entered on the roster. Information on the roster for a person who votes an early voting ballot by mail shall be made available for public inspection as provided below not later than 11 a.m. on the day following the day the early voting clerk receives any ballot voted by mail.

The information must be made available:

1. For an election in which the county clerk is the early voting clerk:
    a. On the publicly accessible internet website of the county; or

b. If the county does not maintain a website, on the bulletin board used for posting notice of meetings of the commissioners court; or

2. For an election not described by item 1:

a. On the publicly accessible internet website of the district; or

b. If the district does not maintain a website, on the bulletin board used for posting notice of board meetings.

Election Code 87.121(a), (g)-(i)

Conducting Elections

Elections shall be conducted in accordance with Election Code Title 6, Chapters 61-68.

Bilingual Materials

Spanish

Bilingual election materials shall be used in each election precinct situated wholly or partly in a county in which five percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census that may be officially recognized or acted upon by the state or political subdivisions. *Election Code 272.002*

Other Languages

If the director of the census determines that a district must provide election materials in a language other than English or Spanish, the district shall provide election materials in that language in the same manner in which the district would be required to provide materials in Spanish, to the extent applicable. *Election Code 272.011; 52 U.S.C. 10503*

Voting Systems

A voting system shall be adopted and utilized in accordance with Election Code Title 8.

Accessible Voting Stations

Except as provided below, each polling place must provide at least one voting station that complies with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments, Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments, and the requirements for accessibility under 52 U.S.C. Section 21081(a)(3) [formerly 42 U.S.C. Section 15481(a)(3)] and its subsequent amendments, and that provides a practical and effective means for voters with physical disabilities to cast a secret ballot. *Election Code 61.012*

Electronic Voting System Exceptions

For an election other than an election of a district that is held jointly with another election in which a federal office appears on the ballot, a district is not required to meet the requirements for accessibility under Election Code 61.012(a)(1)(C) if the district is located in a county that meets certain population and other requirements set

forth in Election Code 61.013(a). A district that intends to use this provision to provide fewer voting stations that meet the requirements for accessibility than required must provide notice under Election Code 61.013(d). *Election Code 61.013*

Open Meetings Act Training

Not later than the 90th day after taking the oath of office, each board member shall complete training of not less than one and not more than two hours regarding the responsibilities of the board and its members under Government Code Chapter 551 (Open Meetings Act).

The attorney general may provide the training and may also approve other acceptable sources of training.

The board shall maintain and make available for public inspection the record of its members' completion of the training. The failure of one or more members of the board to complete the training does not affect the validity of an action taken by the board.

Gov't Code 551.005

Public Information Act Training

Not later than the 90th day after taking the oath of office, each board member shall complete training of not less than one and not more than two hours regarding the responsibilities of the board and its officers and employees under Government Code Chapter 552 (Public Information Act [PIA]). A board member may designate a public information coordinator to satisfy the training for the board member if the public information coordinator is primarily responsible for administering the responsibilities of the board member or board under the PIA. The attorney general may require a board member to complete the course of training if the attorney general determines that the district has failed to comply with a requirement of the PIA. *Gov't Code 552.012(b), (b-1), (c)* [See GBAA regarding public information coordinator training.]

SBOE-Required Training

A trustee must complete any training required by the State Board of Education (SBOE). *Education Code 11.159*

The SBOE's framework for school board development [see BBD(EXHIBIT)] shall be distributed annually by the board president to all current board members and the superintendent. All board trainings and continuing education under 19 Administrative Code 61.1 shall comply with state law. *19 TAC 61.1(a)*

The continuing education required under Education Code 11.159 applies to each member of the board. To the extent possible, an entire board shall participate in continuing education programs together. *19 TAC 61.1(b), (j)*

No continuing education shall take place during a board meeting unless that meeting is called expressly for the delivery of board member continuing education. Continuing education may take place prior to or after a legally called board meeting in accordance with Government Code 551.001(4) (definition of "meeting"). *19 TAC 61.1(f)*

An education service center (ESC) board member continuing education program shall be open to any interested person, including a current or prospective board member. A district is not responsible for any costs associated with individuals who are not current board members. *19 TAC 61.1(g)*

Annually, the SBOE shall commend those local board-superintendent teams that complete at least eight hours of the continuing education specified at Team Building and Additional Continuing Education, below, as an entire board-superintendent team.

Annually, the SBOE shall commend local board-superintendent teams that effectively implement the commissioner of education's trustee improvement and evaluation tool developed under Education Code 11.182 [see BG], or any other tool approved by the commissioner.

19 TAC 61.1(l), (m)

Verification

For each training described below, the provider of continuing education shall provide verification of completion of board member continuing education to the individual participant and to the participant's school district. The verification must include the provider's authorization or registration number. *19 TAC 61.1(i)*

Reporting

At the last regular board meeting before an election of trustees, the board president shall announce the name of each board member who has completed the required continuing education, who has exceeded the required hours of continuing education, and who is deficient in meeting the required continuing education as of the anniversary of the date of each board member's election or appointment to the board or two-year anniversary of his or her previous training, as applicable. The announcement shall state that completing the required continuing education is a basic obligation and expectation of any board member under SBOE rule. The minutes of the last regular board meeting held before an election of trustees must reflect whether each trustee has met or is deficient in meeting the training required for the trustee as of the first anniversary of the date of the trustee's election or appointment or two-year anniversary of his or her previous training, as applicable. The president shall cause the minutes to reflect the announcement and, if the minutes reflect that a trustee is deficient in training as of the anniversary of his or her joining the board, the district shall post the minutes on the district's internet website within 10 business days of the meeting and maintain the posting until the trustee meets the requirements. *19 TAC 61.1(k); Education Code 11.159(b)*

Local District Orientation

Each board member shall complete a local district orientation session. The purpose of the local orientation is to familiarize new

board members with local board policies and procedures and district goals and priorities.

A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed board member who did not complete this training in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

The orientation shall:

1. Be at least three hours in length.
2. Address local district practices in the following, in addition to topics chosen by the local district:
    a. Curriculum and instruction;
    b. Business and finance operations;
    c. District operations;
    d. Superintendent evaluation; and
    e. Board member roles and responsibilities.

Each board member should be made aware of the continuing education requirements of 19 Administrative Code 61.1 and those of the following:

1. Open meetings act in Government Code 551.005 [see Open Meetings Act Training above];
2. Public information act in Government Code 552.012 [see Public Information Act Training above]; and
3. Cybersecurity in Government Code 2054.5191 [see CQB].

The orientation shall be open to any board member who chooses to attend.

19 TAC 61.1(b)(1)

Education Code Orientation

Each board member shall complete a basic orientation to the Education Code and relevant legal obligations. The orientation shall have special, but not exclusive, emphasis on statutory provisions related to governing Texas school districts.

A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed board member who did not complete this training in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

The orientation shall be at least three hours in length. Topics shall include, but not be limited to, Education Code Chapter 26 (Parental Rights and Responsibilities) and Education Code 28.004 (Local School Health Advisory Council and Health Education Instruction).

The orientation shall:

1. Be provided by an ESC.

2. Be open to any board member who chooses to attend.

The continuing education may be fulfilled through online instruction, provided that the training incorporates interactive activities that assess learning and provide feedback to the learner and offers an opportunity for interaction with the instructor.

19 TAC 61.1(b)(2)

Legislative Update

After each session of the Texas Legislature, including each regular session and called session related to education, each board member shall complete an update to the basic orientation to the Education Code.

The update session shall be of sufficient length to familiarize board members with major changes in statute and other relevant legal developments related to school governance.

The update shall be provided by an ESC or a registered provider [see Registered Provider, below].

A board member who has attended an ESC basic orientation session described at Education Code Orientation, above, that incorporated the most recent legislative changes is not required to attend an update.

The continuing education may be fulfilled through online instruction, provided that the training is designed and offered by a registered provider, incorporates interactive activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor.

19 TAC 61.1(b)(3)

Team Building

The entire board shall participate with their superintendent in a team-building session.

The purpose of the team-building session is to enhance the effectiveness of the board-superintendent team and to assess the continuing education needs of the board-superintendent team.

The session shall be held annually and shall be at least three hours in length.

The session shall include a review of the roles, rights, and responsibilities of the board, including its oversight relationship to administrators, as outlined in the framework for school board development. [See BBD(EXHIBIT)] The assessment of needs shall be based on the framework for school board development and shall be used to plan continuing education activities for the year for the governance leadership team.

The team-building session shall be provided by an ESC or a registered provider [see Registered Provider, below, and Authorized Provider, below].

19 TAC 61.1(b)(4)

Additional Continuing Education (Based on Assessed Needs)

In addition to the continuing education requirements set out above, each board member shall complete additional continuing education based on the framework for school board development. [See BBD(EXHIBIT)]

The purpose of continuing education is to address the continuing education needs referenced at Team Building above.

The continuing education shall be completed annually.

At least 50 percent of the continuing education shall be designed and delivered by persons not employed or affiliated with the board member's school district. No more than one hour of the required continuing education that is delivered by the district may use self-instructional materials.

The continuing education shall be provided by an ESC or a registered provider [see Registered Provider, below].

The continuing education may be fulfilled through online instruction, provided that the training is designed and offered by a registered provider, incorporates interactive activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor.

First Year

In a board member's first year of service, he or she shall complete at least 10 hours of continuing education in fulfillment of assessed needs.

Subsequent Years

Following a board member's first year of service, he or she shall complete at least five hours of continuing education annually in fulfillment of assessed needs.

Board President

A board president shall complete continuing education related to leadership duties of a board president as some portion of the annual requirement.

19 TAC 61.1(b)(5)

Evaluating Student Academic Performance

Each board member shall complete continuing education on evaluating student academic performance and setting individual campus goals for early childhood literacy and mathematics and college, career, and military readiness.

The purpose of the training on evaluating student academic performance is to provide research-based information to board members that is designed to support the oversight role of the board of trustees outlined in Education Code 11.1515. [See BAA]

The purpose of the continuing education on setting individual campus goals for early childhood literacy and mathematics and college, career, and military readiness is to facilitate boards meeting the requirements of Education Code 11.185 and 11.186.

A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed board member who did not complete this training in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

The continuing education shall be completed every two years and shall be at least three hours in length.

The continuing education required by this provision shall include, at a minimum:

1. Instruction in school board behaviors correlated with improved student outcomes with emphasis on:
    a. Setting specific, quantifiable student outcome goals; and
    b. Adopting plans to improve early literacy and numeracy and college, career, and military readiness for applicable student groups evaluated in the Closing the Gaps domain of the state accountability system established under Education Code Chapter 39;
2. Instruction in progress monitoring practices to improve student outcomes; and
3. Instruction in state accountability with emphasis on the Texas Essential Knowledge and Skills, state assessment instruments administered under Education Code Chapter 39, and the state accountability system established under Chapter 39.

The continuing education shall be provided by an authorized provider [see Authorized Provider, below].

If the training is attended by an entire board and its superintendent, includes a review of local school district data on student achievement, and otherwise meets the requirements described at Team Building above, the training may serve to meet a board member's obligation to complete training described at Team Building and at Evaluating Student Academic Performance, above, as long as the training complies with the Open Meetings Act.

19 TAC 61.1(b)(6)

Identifying and Reporting Abuse

Each board member shall complete continuing education on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children in accordance with Education Code 11.159(c)(2).

A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed board member who did not complete this training in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

The training shall be completed every two years and shall be at least one hour in length.

The training must familiarize board members with the requirements of Education Code 38.004 and 38.0041, and 19 Administrative Code 103.1401 (relating to Reporting Child Abuse or Neglect, Including Trafficking of a Child).

The training required by this provision shall include, at a minimum:

1. Instruction in best practices of identifying potential victims of child abuse, human trafficking, and other maltreatment of children;

2. Instruction in legal requirements to report potential victims of child abuse, human trafficking, and other maltreatment of children; and

3. Instruction in resources and organizations that help support victims and prevent child abuse, human trafficking, and other maltreatment of children.

The training sessions shall be provided by a registered provider [see Registered Provider, below].

This training may be completed online, provided that the training is designed and offered by a registered provider, incorporates inter-

active activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor.

19 TAC 61.1(b)(7)

School Safety

The SBOE shall require a trustee to complete training on school safety. *Education Code 11.159(b-1)*

The continuing education required under Education Code 11.159(b-1) applies to each member of an independent school district board of trustees.

Each member shall complete the training on school safety adopted by the SBOE. The training requirement shall be fulfilled by completing the online course adopted by the SBOE and made available by the commissioner of education. The training shall be completed every two years.

A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed trustee who did not complete the training in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

A district shall maintain verification of completion for each trustee.

19 TAC 61.3

Training Provider

Registered Provider

For the purposes of 19 Administrative Code 61.1, a registered provider has demonstrated proficiency in the content required for a specific training. A private or professional organization, school district, government agency, college/university, or private consultant shall register with the Texas Education Agency (TEA) to provide the board member continuing education required by 19 Administrative Code 61.1(b)(3), (5), and (7) [see Legislative Update, Additional Continuing Education, and Identifying and Reporting Abuse, above]. The registration process shall include documentation of the provider's training and/or expertise in the activities and areas covered in the framework for governance leadership. An updated registration shall be required of a provider of continuing education every three years.

A district that provides continuing education exclusively for its own board members is not required to register.

19 TAC 61.1(c)

[See 19 Administrative Code 61.1(c) for information about registration requirements for providers.]

Authorized Provider

An authorized provider meets all the requirements of a registered provider and has demonstrated proficiency in the content required by 19 Administrative Code 61.1(b)(4) and (6). Proficiency may be demonstrated in accordance with 19 Administrative Code 61.1(e).

A school district or individual may be authorized by TEA to provide the board member training required in 19 Administrative Code 61.1(b)(4) and (6).

An ESC shall be authorized by TEA to provide the board member training required in 19 Administrative Code 61.1(b)(4) and (6).

19 TAC 61.1(e)

[See above for 19 Administrative Code 61.1(b)(4) on Team Building and (b)(6) on Evaluating Student Academic Performance.]

Prohibition on Political Advocacy

A provider of training may not engage in political advocacy during the training sessions under 19 Administrative Code 61.1. For purposes of this prohibition, “political advocacy” means supporting or opposing political candidates, a particular party, or a group of candidates who hold a particular political viewpoint or position, specifically or by unmistakable implication, with the intent to influence the outcome of an election or appointment, and/or supporting or opposing any measure with the intent to influence the outcome of a legislative, rulemaking, or other policy process or measure. Political advocacy shall not include discussions on fostering legislative relationships, legislative or rulemaking processes, or legislative or policy updates. *19 TAC 61.1(d)*

Note: For cybersecurity training requirements, see CQB(LEGAL). For artificial intelligence training requirements, see CQD(LEGAL).

Unless authorized by the board, a member of the board may not, individually, act on behalf of the board. *Education Code 11.051(a-1)* [See BE regarding action by a majority of the board]

Access to Information Under the Public Information Act

A board member may inspect, duplicate, or inspect and duplicate public information maintained by the district if the member is acting in their official capacity.

Public information requested under this provision shall be provided to the board member promptly and without charge. Promptly means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

Gov't Code 552.401, .403(a)-(b), .221(a)

Redaction

If requested by the board member, public information requested under this provision that is confidential under law shall be redacted from the information provided to the board member without charge. *Gov't Code 552.403(c)*

Attorney-Client Privilege

Information subject to attorney-client privilege is not subject to disclosure to a board member under this provision unless the attorney-client relationship upon which the privilege is based applies to the board member. A district shall inform the board member if information responsive to a request under this provision is withheld due to attorney-client privilege. *Gov't Code 552.403(d)*

Confidentiality Agreement

A district that has been requested to provide information under this provision may request the board member who is receiving public information that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

1. The information not be disclosed;
2. The information be labeled as confidential;
3. The information be kept securely; or
4. The number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned remaining confidential and subject to the confidentiality agreement.

A district, by providing public information under Government Code Chapter 552, Subchapter K that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal

law or waive the right to assert exceptions to required disclosure of the information in the future.

Gov't Code 552.404

Determination by Attorney General

A board member who has received a request to sign a confidentiality agreement may seek a decision about whether the information covered by the confidentiality agreement is confidential under law. A confidentiality agreement signed under Government Code 552.404 is void to the extent that the agreement covers information that is determined by the attorney general or a court not to be confidential under law.

The attorney general shall promptly render a decision determining whether the information covered by the confidentiality agreement is confidential under law not later than the 45th business day after the date the attorney general received the request.

Gov't Code 552.405(a), (c)

Access to Information Under the Education Code

When acting in the member's official capacity, a board member has an inherent right of access to information, documents, and records maintained by the district.

"Official capacity" means all duties of office and includes administrative decisions or actions.

The district shall provide the information, documents, and records to the board member without requiring the board member to submit a public information request under Government Code Chapter 552 (Public Information Act) and without regard to whether the requested items are the subject of or relate to an item listed on an agenda for an upcoming meeting.

A district shall provide a board member with information, documents, and records requested not later than the 20th business day after the date the district receives the request. The district may take a reasonable additional period of time, not to exceed the 30th business day after the date the district receives the request, to respond to a request if compliance by the 20th business day would be unduly burdensome given the amount, age, or location of the requested information. The district shall inform the board member of the reason for the delay and the date by which the information will be provided.

If a district does not provide requested information to a board member in the time required, the member may bring suit against the district for appropriate injunctive relief. A member who prevails in a suit is entitled to recover court costs and reasonable attorney's

fees. The district shall pay the costs and fees from the budget of the superintendent's office.

Confidential Information

The district may withhold or redact information, a document, or a record requested by a board member to the extent that the item is excepted from disclosure or is confidential under the Public Information Act or other law [see GBA].

A board member shall maintain the confidentiality of information, documents, and records received from the district as required by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g) and any other applicable privacy laws. [See FL]

Report of Requests

A district shall post, in a place convenient to the public, the cost of responding to one or more requests submitted by a board member under Education Code 11.1512(c) if the requests are for 200 or more pages of material in a 90-day period.

A district shall report annually to the Texas Education Agency not later than September 1 of each year:

1. The number of requests submitted by a board member under Education Code 11.1512(c) during the preceding school year; and
2. The total cost to the district for that school year of responding to the requests.

Education Code 11.1512(c)–(f)

Access to Student Records

Personally identifiable information in education records may be released, without the written consent of the student's parents, only to a school official who has a legitimate educational interest in the education records. *34 C.F.R. 99.31* [See FL]

Offenses Regarding Records and Information

A person commits an offense if the person:

1. Willfully destroys, mutilates, removes without permission as provided by Government Code Chapter 552 (Public Information Act), or alters public information; or
2. Distributes information considered confidential under the terms of Government Code Chapter 552.

Gov't Code 552.351, .352

[For information regarding the offenses of destruction or alienation of record and tampering with governmental record, see CPC(LEGAL). For information regarding misuse of official information, see BBFB(LEGAL).]

Visits to District Facility

A district shall create a policy on visits to a district campus or facility by a member of the board. *Education Code 11.1512(g)*

Protections for Legislative Activity

A local officer, including a school board member, may not be subject to disciplinary action or a sanction, penalty, disability, or liability for:

1. An action permitted by law that the officer takes in the officer's official capacity regarding a legislative measure;
2. Proposing, endorsing, or expressing support for or opposition to a legislative measure or taking any action permitted by law to support or oppose a legislative measure;
3. The effect of a legislative measure or of a change in law proposed by a legislative measure on any person; or
4. A breach of duty, in connection with the board member's practice of or employment in a licensed or regulated profession or occupation, to disclose to any person information, or to obtain a waiver or consent from any person, regarding the officer's actions relating to a legislative measure; or the substance, effects, or potential effects of a legislative measure.

Gov't Code 572.059

Board Member Immunities

The statutory immunity detailed below is in addition to and does not preempt the common law doctrine of official and governmental immunity. *Education Code 22.051(b)*

State Law Immunities

A board member is not personally liable for any act that is incident to or within the scope of the duties of the board member's position and that involves the exercise of judgment or discretion. *Education Code 22.0511(a)*

Federal Law Immunities

Except as provided in 20 U.S.C. Section 7946(b), no board member shall be liable for harm caused by an act or omission of the board member on behalf of a district if the conditions of the Paul D. Coverdell Teacher Protection Act of 2001 are met. *20 U.S.C. 7943, 7946(a)* [See also DGC]

Majority Vote

The board may act only by majority vote of the members present at a meeting held in compliance with Government Code Chapter 551 (Open Meetings Act), at which a quorum of the board is present and voting. A majority vote is generally determined from a majority of those present and voting, excluding abstentions, assuming a quorum is present. *Education Code 11.051(a-1); Atty. Gen. Op. GA-689 (2009)*

No Secret Ballot

No vote shall be taken by secret ballot. *Atty. Gen. Op. JH-1163 (1978)*

Definitions

Deliberation

"Deliberation" means a verbal or written exchange between a quorum of a board, or between a quorum of a board and another person, concerning an issue within the jurisdiction of the board. *Gov't Code 551.001(2)*

Meeting

"Meeting" means:

1. A deliberation between a quorum of a board, or between a quorum of the board and another person, during which public business or public policy over which the board has supervision or control is discussed or considered, or during which the board takes formal action; or
2. Except as otherwise provided below, a gathering:
    a. That is conducted by the board or for which the board is responsible;
    b. At which a quorum of members of the board is present;
    c. That has been called by the board; and
    d. At which board members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the district, about the public business or public policy over which the board has supervision or control.

Gov't Code 551.001(4)

Exceptions to Meeting

Social Function, Convention, or Candidate Event

The term does not include the gathering of a quorum of a board at a social function unrelated to the public business that is conducted by the board, the attendance by a quorum of a board at a regional, state, or national convention or workshop, ceremonial event, or press conference, or the attendance by a quorum of a board at a candidate forum, appearance, or debate to inform the electorate, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, press conference, forum, appearance, or debate. *Gov't Code 551.001(4)*

Legislative Committee or Agency Meeting

The attendance by a quorum of a board at a meeting of a committee or agency of the legislature is not considered to be a meeting of the board if the deliberations at the meeting by the board members consist only of publicly testifying, publicly commenting, and publicly responding to a question asked by a member of the legislative committee or agency. *Gov't Code 551.0035(b)*

Online Message Board

For information on communications posted to an online message board, see BBI.

Quorum

"Quorum" means a majority of the number of members fixed by statute. *Gov't Code 551.001(6); 311.013(b)*

Disaster Exception

Notwithstanding any other law, a quorum is not required for the board to act if:

1. The district's jurisdiction is wholly or partly located in the area of a disaster declared by the president of the United States or the governor; and
2. A majority of the members of the board are unable to be present at a board meeting as a result of the disaster.

Gov't Code 418.1102

Recording

"Recording" means a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed. *Gov't Code 551.001(7)*

Prohibited Series of Communications

A board member commits an offense if the member:

1. Knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by the Open Meetings Act and that concern an issue within the jurisdiction of the board in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and
2. Knew at the time the member engaged in the communication that the series of communications:
    a. Involved or would involve a quorum; and
    b. Would constitute a deliberation once a quorum of members engaged in the series of communications.

Gov't Code 551.143

Superintendent Participation

The board shall provide the superintendent an opportunity to present at a meeting an oral or written recommendation to the board on any item that is voted on by the board at the meeting. *Education Code 11.051(a-1)*

Access to Board Meetings

Open to Public

Every regular, special, or called meeting of a board shall be open to the public, except as provided by the Open Meetings Act. *Gov't Code 551.002* [See BEC for exceptions for closed meetings.]

Parental Access

A parent is entitled to complete access to any meeting of the board, other than a closed meeting held in compliance with Government Code Chapter 551, Subchapters D and E. *Education Code 26.007(a)*

[See FA(LEGAL) for information related to holding board meetings outside of typical work hours.]

Exclusion of Witnesses

A board that is investigating a matter may exclude a witness from a hearing during the examination of another witness in the investigation. *Gov't Code 551.084*

Location

A board must hold each public meeting within the boundaries of the district, except:

1. As required by law; or
2. To hold a joint meeting with another district or with another governmental entity, as defined by Government Code 2051.041, if the boundaries of the governmental entity are in whole or in part within the boundaries of the district.

Education Code 26.007(b)

Required Meeting Records

Minutes or Recording

A board shall prepare and keep minutes or make a recording of each open meeting. The minutes must state the subject matter of each deliberation and indicate each vote, order, decision, or other action taken. *Gov't Code 551.021*

The board shall make a recording of each regular or special meeting of the board. *Education Code 11.0621(c)*

The minutes, as approved by the board, of a regular or special meeting of the board must reflect each member's attendance at or absence from the meeting and vote on any item that is voted on by the board at the meeting. *Education Code 11.0621(a)*

Availability

The board shall post the minutes, as approved by the board, on the district's website not later than the seventh day after the date of a meeting at which a quorum of the board is present and voting. *Education Code 11.0621(b)(1)*

The minutes and recordings of an open meeting are public records and shall be available for public inspection and copying on request to the superintendent or designee. *Gov't Code 551.022; Education Code 11.0621(d)*

Resolutions

The board shall post on the district's website any resolution adopted by the board not later than the seventh day after the date of the meeting at which the resolution was adopted. *Education Code 11.0621(b)(2)*

Note: For website posting requirements regarding the record of a board meeting, see CQA.

Notice Required

A board shall give written notice of the date, hour, place, and subject of each meeting held by the board. *Gov't Code 551.041*

Continued Meeting

Government Code 551.041, above, does not require a board that recesses an open meeting to the following regular business day to post notice of the continued meeting if the action is taken in good faith and not to circumvent the Open Meetings Act. If an open meeting is continued to the following regular business day and, on that following day, the board continues the meeting to another day, the board must give the required written notice of the meeting continued to that other day. *Gov't Code 551.0411(a)*

Inquiry During Meeting

If, at a meeting of a board, a member of the public or of the board inquires about a subject for which notice has not been given, the notice provisions do not apply to a statement of specific factual information given in response to the inquiry or a recitation of existing policy in response to the inquiry. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting. *Gov't Code 551.042*

Time and Accessibility of Notice

The notice of a meeting of a board must be posted in a place readily accessible to the general public at all times for at least three business days before the scheduled date of the meeting, except as provided at Emergency Meeting or Emergency Addition to Agenda, below. A district shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the district. *Gov't Code 551.043(a), .051*

If a district is required to post notice of a meeting on the internet:

1. The district satisfies the requirement that the notice must be posted in a place readily accessible to the general public at all times by making a good-faith attempt to continuously post the notice on the internet during the prescribed period;

2. The district must still comply with any duty imposed by the Open Meetings Act to physically post the notice at a particular location; and

3. If the district makes a good-faith attempt to continuously post the notice on the internet during the prescribed period, the notice physically posted must be readily accessible to the general public during normal business hours.

Gov't Code 551.043(b)

Internet Posting — Notice

If a district maintains an internet website, in addition to the other place at which notice or an agenda of a meeting is required to be posted, a board must also concurrently post notice of a meeting and the agenda for the meeting on the internet website.

The validity of a posted notice of a meeting or an agenda by a board subject to these provisions that made a good-faith attempt to comply with these requirements is not affected by a failure to comply that is due to a technical problem beyond the control of the district.

Gov't Code 551.056

[See CQA for other website posting requirements. See CCG for meeting notice requirements when the district will discuss or adopt a budget.]

Specificity of Agenda/Notice

Agendas for all meetings must be sufficiently specific to inform the public of the subjects to be discussed at the meeting, setting out any special matters to be considered or any matter in which the public has a particular interest. *Cox Enterprises, Inc. v. Austin Indep. Sch. Dist., 706 S.W.2d 956 (Tex. 1986); Point Isabel Indep. Sch. Dist. v. Hinojosa, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied); Atty. Gen. Op. JH-1045 (1977)*

Emergency Meeting or Emergency Addition to Agenda

In an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or the supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda for a meeting for which notice has been posted in accordance with Government Code Chapter 551, Subchapter C, is sufficient if the notice or supplemental notice is posted for at least one hour before the meeting is convened.

A board may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted as described above other than:

1. A matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting; or

2. An agenda item listed on a notice of the meeting before the supplemental notice was posted.

An emergency or urgent public necessity exists only if immediate action is required of a board because of:

1. An imminent threat to public health and safety, including a threat described in item 2, below, if imminent; or

2. A reasonably unforeseeable situation, including:

   a. Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

   b. Power failure, transportation failure, or interruption of communication facilities;

   c. Epidemic; or

   d. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

The board shall clearly identify the emergency or urgent public necessity in the notice of an emergency meeting or supplemental notice.

The sudden relocation of a large number of residents from the area of a declared disaster to a district's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation.

Gov't Code 551.045

Catastrophe

A board that is prevented from convening an open meeting that was otherwise properly posted under Government Code 551.041 because of a catastrophe may convene the meeting in a convenient location within 72 hours pursuant to Government Code 551.045 if the action is taken in good faith and not to circumvent the Open Meetings Act. If the board is unable to convene the open meeting within those 72 hours, the board may subsequently convene the meeting only if the board gives the required written notice of the meeting.

"Catastrophe" means a condition or occurrence that interferes physically with the ability of a board to conduct a meeting, including:

1. Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
2. Power failure, transportation failure, or interruption of communication facilities;
3. Epidemic; or
4. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

Gov't Code 551.0411(b), (c)

Special Notice to News Media

A district shall provide special notice of each meeting to any news media that has requested special notice and agreed to reimburse the district for the cost of providing the special notice. The notice shall be by telephone, facsimile transmission, or electronic mail. *Gov't Code 551.052*

The board president or board member who calls an emergency meeting or adds an emergency item to the agenda of a board meeting shall notify the news media of the emergency meeting or emergency item. The president or member is required to notify only those members of the news media that have previously filed a request containing all pertinent information for the special notice and agreed to reimburse the board for the cost of providing the special notice. The president or member shall give the notice by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened. *Gov't Code 551.047*

Meeting by Telephone Conference Call

A board may hold a meeting by telephone conference call only if an emergency or public necessity exists within the meaning of Government Code 551.045 and the convening at one location of a quorum of the board is difficult or impossible, or if the meeting is held by an advisory board.

Technical Requirements and Recording

Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be recorded. The recording shall be made available to the public.

The location designated in the notice as the location of the meeting shall provide two-way communication during the entire telephone conference call meeting and the identification of each party to the telephone conference shall be clearly stated prior to speaking.

Notice of Location

The telephone conference call meeting is subject to the notice requirements applicable to other meetings. The notice must specify

as the location of the meeting the location where meetings of the board are usually held.

Gov't Code 551.125

Meeting by Videoconference

"Videoconference call" or "videoconference" means a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through audio and video signals transmitted over a telephone network, a data network, or the internet. *Gov't Code 551.001(8); 1 TAC 209.1(5)*

A board member or district employee may participate remotely in a board meeting by means of a videoconference call if the video and audio feed of the board member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the provisions below. A board member who participates by videoconference call shall be counted as present at the meeting for all purposes. A board member who participates in a meeting by video conference call shall be considered absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected. The board may continue the meeting only if a quorum remains present at the meeting location or, if applicable, continues to participate in a meeting conducted as specified at Multiple Counties, below. *Gov't Code 551.127(a-1)-(a-3)*

Quorum in One Location

A meeting may be held by videoconference call only if a quorum of the board is physically present at one location of the meeting, except as provided at Multiple Counties, below.

Multiple Counties

A meeting of a board of a district that extends into three or more counties may be held by videoconference call only if the board member presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.

Additional Notice Requirements

A meeting held by videoconference call is subject to the notice requirements applicable to other meetings in addition to the notice requirements applicable to meetings by videoconference call.

The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the board will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting held by videoconference call described above at Multiple Counties must specify as a location of the meeting the location where the board member presiding over the meeting will be physically

present and specify the intent to have that member present at that location.

Gov't Code 551.127(b)-(e)

Quality of Audio and Video Signals

Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at the location specified in the notice. If a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

The location specified in the notice, and each remote location from which a member of the board participates, shall have two-way audio and video communication with each other location during the entire meeting. The face of each participant in the videoconference call, while that participant is speaking, shall be clearly visible, and the voice audible, to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the physical location described by the notice and at any other location of the meeting that is open to the public.

The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed minimum standards specified by the Department of Information Resources (DIR). The audio and video signals perceptible by members of the public at the location of the meeting described by the notice and at each remote location from which a member participates must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

Gov't Code 551.127(f), (h)-(j)

Minimum Standards

No requirements found in subchapter B of 1 Administrative Code Chapter 209 (minimum standards for meetings held by videoconference by governmental bodies) shall be interpreted to overrule any section of the Open Meetings Act or any rules adopted or opinions issued by the Office of the Attorney General interpreting the Open Meetings Act. *1 TAC 209.4*

Boards conducting open or closed meetings by videoconference call shall review and consider any applicable guidelines promulgated by DIR. *1 TAC 209.5(b)*

Computer-Based Videoconferencing Applications

"Computer-based videoconferencing application" means a commercially available application designed to facilitate videoconferencing between a personal computer to another personal computer

or mobile device either one-to-one or in a group environment. *1 TAC 209.1(1)*

All computer-based videoconferencing applications shall employ a minimum bandwidth transmission speed and/or adequate data compression algorithm to produce a sufficient quality for audio and video such that audio volume and clarity and video clarity are sufficient to hear and view all speaking participants on the videoconference clearly.

Computer-based videoconferencing applications may specify unique minimum requirements for computer central processing units, memory, and video capability to run the computer-based videoconferencing application. A board shall comply with these minimum requirements.

If the videoconference call hosts a public audience at a location or locations specified by the official notice of the open meeting posted in compliance with Open Meetings Act requirements, then the district shall establish a minimum of one host computer at the location(s) that will run the computer-based videoconferencing application. This host computer shall then be connected to:

1. Either a separate video monitor of size proportional to the room and clearly visible to all in the room or multiple video monitors so that all attendees may clearly view the video stream; and

2. External speakers of suitable volume and sound quality such that all meeting attendees at the host location may clearly hear the meeting.

Any personal computer used by a board member for the purpose of videoconferencing for an open meeting subject to the Open Meetings Act shall contain a camera and speakers of sufficient quality to permit all meeting attendees to see the individual who is using the personal computer and for the individual to hear all speaking attendees.

1 TAC 209.10

Dedicated Video Room Environments

If a board uses a dedicated video room environment (DVRE) for dedicated camera and speaker equipment but is using a computer-based videoconferencing application that is not part of a proprietary DVRE setup, then the district must comply with all minimum standards for computer-based application software, above, and is not subject to the DIR requirements for a DVRE. *1 TAC 209.11(e)*

Note: The minimum standards for videoconference meetings hosted between dedicated video room environments are outlined in 1 Administrative Code 209.1 and 209.11.

Security Requirements

Each board subject to the Open Meetings Act shall review and comply with any additional internal security requirements of their district that may apply to a meeting held by videoconference.
1 TAC 209.12(a)

Recording

The board shall make at least an audio recording of the meeting. The recording shall be made available to the public.

Remote Participation by the Public

Without regard to whether a member of the board is participating in a meeting from a remote location by videoconference call, a board may allow a member of the public to testify at a meeting from a remote location by videoconference call.

Gov't Code 551.127(g), (k)

Internet Broadcast

Except as provided by Government Code 551.128(b-1), below, and subject to the requirements at Video and Audio Recording of Meeting, below, a board may broadcast an open meeting over the internet.

Except as provided by Government Code 551.128(b-2) [see Existing Website, below], a board that broadcasts a meeting over the internet shall establish an internet site and provide access to the broadcast from that site. The board shall provide on the internet site the same notice of the meeting that the board is required to post under Government Code Chapter 551, Subchapter C. The notice on the internet must be posted within the time required for posting notice under Subchapter C.

Gov't Code 551.128(b), (c)

Note: The provisions at Video and Audio Recording of Meeting apply to a board for a district that has a student enrollment of 10,000 or more.

Video and Audio Recording of Meeting

Required Recording

A board shall:

1. Make a video and audio recording of reasonable quality of each:
   a. Regularly scheduled open meeting that is not a work session or a special called meeting; and
   b. Open meeting that is a work session or special called meeting at which the board votes on any matter or al-

lows public comment or testimony [see BED for requirements regarding public testimony]; and

2. Make available an archived copy of the video and audio recording of each meeting described in item 1.

Internet Posting — Recordings

A board shall:

1. Make the archived recording of each meeting to which these provisions apply available on the internet not later than seven days after the date the recording was made; and

2. Maintain the archived recording on the internet for not less than two years after the date the recording was first made available.

Existing Website

A board may make available the required archived recording on an existing internet site, including a publicly accessible video-sharing or social networking site. The board is not required to establish a separate internet site and provide access to archived recordings of meetings from that site.

District Website

A district that maintains an internet site shall make available on that site, in a conspicuous manner, the archived recording of each meeting or an accessible link to the archived recording of each such meeting.

Exemption

A board is exempt from the internet posting requirements if the board's failure to make the required recording of a meeting available is the result of a catastrophe, as defined by Government Code 551.0411 [see Catastrophe, above], or a technical breakdown. Following a catastrophe or breakdown, a board must make all reasonable efforts to make the required recording available in a timely manner.

Television Broadcast

A board may broadcast a regularly scheduled open meeting on television.

Gov't Code 551.128(b-1)-(b-6)

Recording by Attendee

A person in attendance may record all or any part of an open meeting of a board by means of a recorder, video camera, or other means of aural or visual reproduction. A board may adopt reasonable rules to maintain order at a meeting, including rules relating to the location of recording equipment and the manner in which the recording is conducted. A rule adopted under this provision may not prevent or unreasonably impair a person from exercising a right granted under this provision. *Gov't Code 551.023*

Attorney Consultation

A board may use a telephone conference call, videoconference call, or communications over the internet to conduct a public consultation with its attorney in an open meeting of the board or a private consultation with its attorney in a closed meeting of the board. [See BEC]

Each part of a public consultation by a board with its attorney in an open meeting must be audible to the public at the location specified in the notice of the meeting as the location of the meeting.

These provisions do not authorize the members of a board to conduct a meeting of the board by telephone conference call, video conference call, or communications over the internet; or create an exception to the application of Government Code Chapter 551, Subchapter F (meetings using telephone, videoconference, or internet).

Exception

These provisions do not apply to a consultation with an attorney who is an employee of a district. An attorney who receives compensation for legal services performed, from which employment taxes are deducted by the district, is an employee of the district.

Gov't Code 551.129

Persons with Hearing Impairments

In a proceeding before a board in which the legal rights, duties, or privileges of a party are to be determined by the board after an adjudicative hearing, the board shall supply for a party who is deaf or hearing impaired an interpreter who has qualifications approved by the Texas Commission for the Deaf and Hard of Hearing.

"Deaf or hearing impaired" means having a hearing impairment, regardless of the existence of a speech impairment, that inhibits comprehension of an examination or proceeding, or communication with others.

Gov't Code 558.001, .003

Meeting Place and Time

Board meetings shall be held during a time that is outside of typical work hours. [See FA(LEGAL)]

The notice for a Board meeting shall reflect the date, time, and location of the meeting.

Regular Meetings

Regular meetings of the Board shall normally be held on the second Wednesday of each month at 5:30 p.m. When determined necessary and for the convenience of Board members, the Board President may change the date, time, or location of a regular meeting with proper notice.

Special or Emergency Meetings

The Board President shall call special meetings at the Board President's discretion or on request by two members of the Board.

The Board President shall call an emergency meeting when it is determined by the Board President or two members of the Board that an emergency or urgent public necessity, as defined by law, warrants the meeting.

Agenda

Deadline

The deadline for submitting items for inclusion on the agenda is the 10th calendar day before regular meetings and the 10th calendar day before special meetings.

Preparation

In consultation with the Board President, the Superintendent shall prepare the agenda for all Board meetings. Any Board member may request that a subject be included on the agenda for a meeting, and the Superintendent shall include on the preliminary agenda of the meeting all topics that have been timely submitted by a Board member.

Before the official agenda is finalized for any meeting, the Superintendent shall consult the Board President to ensure that the agenda and the topics included meet with the Board President's approval. In reviewing the preliminary agenda, the Board President shall ensure that any topics the Board or individual Board members have requested to be addressed are either on that agenda or scheduled for deliberation at an appropriate time in the near future. The Board President shall not have authority to remove from the agenda a subject requested by a Board member without that Board member's specific authorization.

Notice to Members

Members of the Board shall be given notice of regular and special meetings at least three business days prior to the scheduled date of the meeting and at least one hour prior to the time of an emergency meeting.

Closed Meeting

Notice of all meetings shall provide for the possibility of a closed meeting during an open meeting, in accordance with law.

The Board may conduct a closed meeting when the agenda subject is one that may properly be discussed in closed meeting. [See BEC]

Order of Business

The order of business for regular Board meetings shall be as set out in the agenda accompanying the notice of the meeting. At the meeting, the order in which posted agenda items are taken may be changed by consensus of Board members.

Rules of Order

The Board shall observe the parliamentary procedures as found in *Robert's Rules of Order, Newly Revised*, except as otherwise provided in Board procedural rules or by law. Procedural rules may be suspended at any Board meeting by majority vote of the members present.

Record Vote

Voting on any item shall be a record vote by show of hands or roll call, as directed by the Board President. Any member may abstain from voting on an item, and a member's vote or failure to vote shall be recorded in the minutes. [See BDAA(LOCAL) for the Board President's voting rights]

Consent Agenda

When the agenda is prepared, the Board President shall determine items, if any, that qualify to be placed on the consent agenda. A consent agenda shall include items of a routine and/or recurring nature grouped together under one action item. For each item listed as part of a consent agenda, the Board shall be furnished with background material. All such items shall be acted upon by one vote without separate discussion, unless a Board member requests that an item be withdrawn for individual consideration. The remaining items shall be adopted under a single motion and vote.

Minutes

Board action shall be carefully recorded by the Board Secretary or clerk; when approved, these minutes shall serve as the legal record of official Board actions. The written minutes of all meetings shall be approved by vote of the Board and signed by the Board President and the Board Secretary.

[See CPC regarding retention of records.]

Discussions and Limitation

Discussions shall be addressed to the Board President and then the entire membership. Discussion shall be directed solely to the business currently under deliberation, and the Board President shall halt discussion that does not apply to the business before the Board.

The Board President shall also halt discussion if the Board has agreed to a time limitation for discussion of an item, and that time limit has expired. Aside from these limitations, the Board President shall not interfere with debate so long as members wish to address themselves to an item under consideration.

Exceptions for Closed Meetings

A board may conduct a closed meeting for the purposes described in the following provisions.

Attorney Consultation

A board may conduct a private consultation with its attorney only when it seeks the attorney's advice about pending or contemplated litigation or a settlement offer or on a matter in which the duty of the attorney to the board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the requirement for open meetings. *Gov't Code 551.071* [See BE for permissible methods of communication for attorney consultations]

Real Property

A board may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the board's position in negotiations with a third person. *Gov't Code 551.072*

Prospective Gift

A board may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to a district if deliberation in an open meeting would have a detrimental effect on the board's position in negotiations with a third person. *Gov't Code 551.073*

Personnel Matters

A board is not required to conduct an open meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee. However, a board may not conduct a closed meeting for these purposes if the officer or employee who is the subject of the deliberation or hearing requests a public hearing. *Gov't Code 551.074*

The closed meeting exception for personnel matters does not apply when a board discusses an independent contractor who is not a school employee, such as an engineering, architectural, or consultant firm, or when a board discusses a class or group of employees, not a particular employee. *Atty. Gen. Op. MW-129 (1980), Atty. Gen. Op. H-496 (1975)*

Note: For restrictions on attendance by student trustees at closed meetings, see AIC.

Employee-Employee Complaints

A board is not required to conduct an open meeting to deliberate in a case in which a complaint or charge is brought against a district employee by another employee and the complaint or charge directly results in the need for a hearing. However, a board may not conduct a closed meeting for this purpose if the employee against whom the complaint or charge is brought makes a written request for an open hearing. *Gov't Code 551.082*

Student Discipline	A board is not required to conduct an open meeting to deliberate in a case involving discipline of a public school child. However, a board may not conduct a closed meeting for this purpose if the child's parent or guardian makes a written request for an open hearing. *Gov't Code 551.082*
Personally Identifiable Student Information	A board is not required to conduct an open meeting to deliberate a matter regarding a student if personally identifiable information about the student will necessarily be revealed by the deliberation. Directory information about a public school student is considered to be personally identifiable information about the student for this purpose only if a parent or guardian of the student, or the student if the student has attained 18 years of age, has informed a district that the directory information should not be released without prior consent. [See FL] This exception does not apply if an open meeting about the matter is requested in writing by a parent or guardian of the student or by the student if the student has attained 18 years of age. *Gov't Code 551.0821*
Medical or Psychiatric Records	A board that administers a public insurance, health, or retirement plan is not required to conduct an open meeting to deliberate: 1. The medical records or psychiatric records of an individual applicant for a benefit from the plan; or 2. A matter that includes a consideration of information in the medical or psychiatric records of an individual applicant for a benefit from the plan. *Gov't Code 551.0785*
Security	A board is not required to conduct an open meeting to deliberate: 1. The deployment, or specific occasions for implementation, of security personnel or devices; or 2. A security audit. *Gov't Code 551.076* A board is not required to conduct an open meeting to deliberate: 1. Security assessments or deployments relating to information resources technology; 2. Network security information as described by Government Code 2059.055(b); or

3. The deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

Gov't Code 551.089

Cybersecurity

A board is not required to conduct an open meeting to deliberate a cybersecurity measure or policy. "Cybersecurity" means the measures taken to protect a computer, computer network, a computer system, or other technology infrastructure against unauthorized use or access. *Gov't Code 551.0761*

Critical Infrastructure Facility

A board is not required to conduct an open meeting to deliberate a contract solely intended to protect a critical infrastructure facility located in the jurisdiction of the district. "Critical infrastructure facility" means a communication infrastructure system, cybersecurity system, electric grid, electrical power generating facility, substation, switching station, electrical control center, dam, natural gas and natural gas liquids gathering, processing, and storage transmission and distribution system, hazardous waste treatment system, water treatment facility, water intake structure, wastewater treatment plant, pump station, or water pipeline and related support facility, equipment, and property. *Gov't Code 551.0761*

Assessment Instruments

A board shall conduct a closed meeting to discuss or adopt individual assessment instruments or assessment instrument items. *Education Code 39.030(a)*

Emergency Management

A board is not required to conduct an open meeting to deliberate information confidential under Government Code 418.175–418.182, relating to Homeland Security. However, a board must make a tape recording of the proceedings of a closed meeting held to deliberate the information. *Gov't Code 418.183(f)*

Economic Development Negotiations

A board is not required to conduct an open meeting:

1. To discuss or deliberate regarding commercial or financial information that the board has received from a business prospect that the board seeks to have locate, stay, or expand in or near a district and with which the board is conducting economic development negotiations; or

2. To deliberate the offer of a financial or other incentive to such a business prospect.

Gov't Code 551.087

Procedures for Closed Meetings

If a closed meeting is allowed, a board shall not conduct the closed meeting unless a quorum of the board first convenes in an open meeting for which proper notice has been given [see BE] and the presiding officer has publicly announced that a closed meeting will

be held and has identified the section or sections of Government Code Chapter 551 (Open Meetings Act) or other applicable law under which the closed meeting is held. *Gov't Code 551.101*

Vote or Final Action

A final action, decision, or vote on a matter deliberated in a closed meeting shall be made only in an open meeting for which proper notice has been given. *Gov't Code 551.102* [See BE]

Certified Agenda or Recording

A board shall either keep a certified agenda or make a recording of the proceedings of each closed meeting, except for private consultation with a district's attorney. The certified agenda must include a statement of the subject matter of each deliberation, a record of any further action taken, and an announcement by the presiding officer at the beginning and end of the closed meeting indicating the date and time. A presiding officer shall certify that a certified agenda is a true and correct record of the proceedings. If a recording is made, it must include announcements by the presiding officer at the beginning and end of the meeting indicating the date and time. *Gov't Code 551.103*

"Recording" means a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed. *Gov't Code 551.001(7)*

Closed meetings may not be recorded by an individual trustee against the wishes of a majority of a board. *Zamora v. Edgewood Indep. Sch. Dist., 592 S.W.2d 649 (Tex. App.—San Antonio, 1979, writ ref'd n.r.e.)*

Preservation

A board shall preserve the certified agenda or recording of a closed meeting for at least two years after the date of the meeting. If a legal action involving the meeting is brought within that period, the board shall preserve the certified agenda or recording while the action is pending. *Gov't Code 551.104(a)*

Public Access

A certified agenda or recording of a closed meeting is available for public inspection and copying only under a court order issued as a result of litigation involving an alleged violation of the Open Meetings Act. *Gov't Code 551.104(b), (c)*

Prohibitions

No board member shall participate in a closed meeting knowing that neither a certified agenda nor a recording of the closed meeting is being made. *Gov't Code 551.145*

No individual, corporation, or partnership shall without lawful authority disclose to a member of the public the certified agenda or recording of a meeting that was lawfully closed to the public. *Gov't Code 551.146*

No board member shall knowingly call or aid in calling or organizing a closed meeting that is not permitted under the Open Meetings Act, close or aid in closing a regular meeting to the public except as permitted under the Open Meetings Act, or participate in a closed meeting that is not permitted under the Open Meetings Act. *Gov't Code 551.144(a)*

Affirmative Defense

It is an affirmative defense to prosecution under Subsection 551.144(a) that a board member acted in reasonable reliance on a court order or a written interpretation of the open meetings law contained in an opinion of a court of record, the attorney general, or the board's attorney. *Gov't Code 551.144(c)*

United States Constitution

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

A board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. When the board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys. *Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819, 828 (1995); City of Madison v. Wis. Emp. Rel. Comm'n, 429 U.S. 167, 176 (1976); Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968)*

A board may create a limited public forum for the purpose of hearing comments from the public so long as:

1. The board does not discriminate against speech on the basis of viewpoint;
2. Any restrictions are reasonable in light of the purpose served by the forum; and
3. The board provides alternative paths for expressing categories of protected speech that are excluded from the forum.

Fairchild v. Liberty Indep. Sch. Dist., 597 F.3d 747 (5th Cir. 2010)

Texas Constitution

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

Public Comment

A board shall allow each member of the public who desires to address the board regarding an item on an agenda for an open meeting of the board to address the board regarding the item at the meeting before or during the board's consideration of the item.

[See FA(LEGAL) for the requirements relating to prioritizing public comments at the beginning of each board meeting]

Time Limits

A board may adopt reasonable rules regarding the public's right to address the board under these provisions, including rules that limit the total amount of time that a member of the public may address the board on a given item.

Additional Time for Translation

If a board does not use simultaneous translation equipment in a manner that allows the board to hear the translated public testimony simultaneously, a rule adopted that limits the amount of time that a member of the public may address the board must provide

that a member of the public who addresses the board through a translator must be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the board.

Public Criticism

A board may not prohibit public criticism of the board, including criticism of any act, omission, policy, procedure, program, or service. This does not apply to public criticism that is otherwise prohibited by law.

Gov't Code 551.007

Disruption

It is a criminal offense for a person, with intent to prevent or disrupt a lawful meeting, whether in person or virtual, to obstruct or interfere with the meeting by physical action, verbal utterance, or electronic disturbance, including hacking, of any virtual component of the meeting. *Penal Code 42.05*

Limit on Participation

Audience participation at a Board meeting is limited to the portion of the meeting designated to receive public comment in accordance with this policy. At all other times during a Board meeting, the audience shall not enter into discussion or debate on matters being considered by the Board, unless requested by the presiding officer.

Public Comment

Public comment shall occur at the beginning of the meeting. [See FA]

At Board meetings, the Board shall permit public comment limited to items on the agenda posted with notice of the meeting, with the exception of recognitions by school or community organizations that highlight student or employee awards or accomplishments.

Procedures

Individuals who wish to participate during the portion of the meeting designated for public comment shall sign up with the presiding officer or designee before the meeting begins as specified in the Board's procedures on public comment and shall indicate the agenda item or topic on which they wish to address the Board.

Except as permitted by this policy and the Board's procedures on public comment, an individual's comments to the Board shall not exceed three minutes per meeting.

Meeting Management

When necessary for effective meeting management or to accommodate large numbers of individuals wishing to address the Board, the presiding officer may adjust the time allotted to each speaker. However, no individual shall be given less than one minute to make comments.

Board's Response

Specific factual information or recitation of existing policy may be furnished in response to inquiries, but the Board shall not deliberate or decide regarding any subject that is not included on the agenda posted with notice of the meeting.

Complaints and Concerns

Public comment is not intended for the presentation of allegations of employee or student misconduct, requests for employee or student discipline, personal attacks on individuals, shaming or demeaning individuals associated with the District, or disclosing personal information about District employees or students.

If an individual makes a complaint or addresses a concern about an individual employee or student, the presiding officer or designee shall immediately interrupt the speaker and determine whether a person addressing the Board has attempted to resolve a matter administratively through resolution channels established by policy. If not, the person shall be referred to the appropriate policy (see partial list below) to seek resolution:

- Employee complaints: DGBA
- Student or parent complaints: FNG
- Public complaints: GF
- Employee sexual harassment complaints: DIA
- Student sexual harassment complaints: FFH
- Complaints against peace officers: CKEA

Disruption

The Board shall not tolerate disruption of the meeting by members of the audience. Speakers or others who engage in disruptive behavior shall be ruled out of order by the presiding officer. Disruptive behavior and actions include, but are not limited to:

1. Using racial slurs, insulting, profane, threatening, derogatory, or abusive language, making violent or threating gestures;
2. Wearing clothing with derogatory symbols or language;
3. Strange, curious, odd, outlandish, peculiar, and irrational conduct that is disruptive to the orderly conduct of a Board meeting; and
4. Wearing clothing and/or a mask that is intended to, or has the effect of, concealing the identity of the individual. Masks and respirators designed to contain respiratory droplets and breath particles and are worn for health reasons shall be permissible.

If, after at least one warning from the presiding officer any person continues to disrupt the meeting by his or her words or actions, then the presiding officer may request assistance from law enforcement officials to have the person removed from the meeting.

Electioneering

No electioneering shall be permitted on behalf of or against an individual running for political office, and no literature pertaining to any form of electioneering shall be permitted during the meeting.

Signs, placards, or banners shall not be allowed inside the boardroom. Additionally, any citizen wishing to distribute printed handout materials to the Board or audience must submit the materials for review by 5:00 p.m. prior to the meeting to the Superintendent's office. The Superintendent or designee shall inform the speaker if the materials have been approved for distribution prior to the meeting. All printed handout materials shall be distributed to the Board or audience before or after public comment, but not during.

Compliance

The board and the district's employees must implement and comply with each policy the district is required to adopt under the Education Code or other law. *Education Code 1.007(b)*

Waivers

Except as provided at Restrictions, a district or campus may apply to the commissioner of education for a waiver of a requirement, restriction, or prohibition imposed by the Education Code or rule of the State Board of Education or commissioner. An application must include:

1. A written plan approved by the board that states the achievement objectives of the campus or district and the inhibition imposed on those objectives by the requirement, restriction, or prohibition; and
2. Written comments from the campus-level or district-level committee established under Education Code 11.251.

Education Code 7.056(a), (b)

Submission and Approval

A campus or district seeking a waiver must submit a written application to the commissioner not later than the 31st day before the campus or district intends to take action requiring a waiver. If the commissioner objects to an application, the commissioner must notify the campus or district in writing that the application is denied not later than the 30th day after the date on which the application is received. If the commissioner does not notify the campus or district of an objection within that time, the application is considered granted. *Education Code 7.056(b), (c)*

Duration

A waiver is effective for the period stated in the application, which may not exceed three years. A campus or district for which a requirement, restriction, or prohibition is waived for a period of three years may receive an exemption from that requirement, restriction, or prohibition at the end of that period if the campus or district has fulfilled the achievement objectives stated in the application. The exemption remains in effect until the commissioner determines that achievement levels of the campus or district have declined. *Education Code 7.056(d)*

Restrictions

Except as provided at Student Achievement Improvement Plan, a campus or district may not receive an exemption or waiver from a:

1. Prohibition on conduct that constitutes a criminal offense;
2. Requirement imposed by federal law or rule, including a requirement for special education or bilingual education programs; or
3. Requirement, restriction, or prohibition relating to:

a. Essential knowledge or skills under Education Code 28.002, or high school graduation requirements under Education Code 28.025;

b. Public school accountability as provided by Education Code Chapter 39, Subchapters B, C, D, and J, and Chapter 39A;

c. Extracurricular activities under Education Code 33.081 or participation in a University Interscholastic League area, regional, or state competition under Education Code 33.0812;

d. Health and safety under Education Code Chapter 38;

e. Purchasing under Education Code Chapter 44, Subchapter B;

f. Elementary school class size limits, except as provided by Education Code 25.112;

g. Removal of a disruptive student from the classroom under Education Code Chapter 37, Subchapter A;

h. At-risk programs under Education Code Chapter 29, Subchapter C;

i. Prekindergarten programs under Education Code Chapter 29, Subchapter E;

j. Educator rights and benefits under Education Code Chapter 21, Subchapters A, C, D, E, F, G, and I, and Chapter 22, Subchapter A;

k. Special education programs under Education Code Chapter 29, Subchapter A;

l. Bilingual education programs under Education Code Chapter 29, Subchapter B; or

m. Requirements for the first day of instruction under Education Code 25.0811.

Education Code 7.056(e)

Student Achievement Improvement Plan

A district or campus that is required to develop and implement a student achievement improvement plan under Chapter 39A, Subchapter A, or Section 39A.051 [see AIC(LEGAL)] may receive an exemption or waiver under these provisions from any law or rule other than:

1. A prohibition on conduct that constitutes a criminal offense;

2. A requirement imposed by federal law or rule;

3. A requirement, restriction, or prohibition imposed by state law or rule relating to:

   a. Public school accountability under Education Code Chapter 39, Subchapters B, C, D, and J, and Chapter 39A; or

   b. Educator rights and benefits under Education Code Chapter 21, Subchapters A, C, D, E, F, G, and I, and Chapter 22, Subchapter A; or

4. Selection of instructional materials under Education Code Chapter 31.

Education Code 7.056(f)

Qualifications

A person may not be employed as a superintendent unless the person holds an appropriate certificate or permit.

The commissioner may waive the requirement for certification of a superintendent if requested by a district as provided by Education Code 7.056 [see BF]. The commissioner may limit the waiver of certification in any manner the commissioner determines is appropriate.

A person who is not certified as a superintendent may not be employed by a district as the superintendent before the person has received a waiver of certification from the commissioner. A person may be designated to act as a temporary or interim superintendent for a district, but the district may not employ the person under a contract as superintendent unless the person has been certified or a waiver has been granted.

Education Code 21.003

Duties

A superintendent is the educational leader and chief executive officer of a district. *Education Code 11.201(a)*

The duties of a superintendent include:

1. Assuming administrative responsibility and leadership for the planning, organization, operation, supervision, and evaluation of the education programs, services, and facilities of a district and for the annual performance appraisal of the district's staff.
2. Except as provided by Education Code 11.202 (duties of principal) [see DK and DP], assuming administrative authority and responsibility for the assignment, supervision, and evaluation of all personnel of a district other than the superintendent.
3. Overseeing compliance with the standards for school facilities. [See CS]
4. Initiating the termination or suspension of an employee or the nonrenewal of an employee's term contract. [See DF series]
5. Managing the day-to-day operations of a district as its administrative manager, including implementing and monitoring plans, procedures, programs, and systems to achieve clearly defined and desired results in major areas of district operations.
6. Preparing and submitting to a board a proposed budget and administering the budget.
7. Preparing recommendations for policies to be adopted by a board and overseeing the implementation of adopted policies.

8. Developing or causing to be developed appropriate administrative regulations to implement policies established by a board.

9. Providing leadership for the attainment and, if necessary, improvement of student performance in a district based on the state's student achievement and quality of learning indicators and other indicators as may be adopted by the commissioner or the board. [See AIA]

10. Organizing a district's central administration.

11. Consulting with the district-level committee. [See BQA]

12. Ensuring:

    a. Adoption of a Student Code of Conduct [see FO] and enforcement of that Code of Conduct; and

    b. Adoption and enforcement of other student disciplinary rules and procedures as necessary.

13. Submitting reports as required by state or federal law, rule, or regulation, and ensuring that a copy of any report required by federal law, rule, or regulation is also delivered to the Texas Education Agency (TEA).

14. Providing joint leadership with a board to ensure that the responsibilities of the board and superintendent team are carried out; and

15. Performing any other duties assigned by action of a board.

Education Code 11.201(d)

In addition, a superintendent shall, on a day-to-day basis, ensure the implementation of the policies created by the board. *Education Code 11.1512(a)*

Collaboration with the Board

A board and a superintendent shall work together to:

1. Advocate for the high achievement of all district students;

2. Create and support connections with community organizations to provide community-wide support for the high achievement of all district students;

3. Provide educational leadership for a district, including leadership in developing the district vision statement and long-range educational plan [see AE];

4. Establish district-wide policies and annual goals that are tied directly to the district's vision statement and long-range educational plan;

5. Support the professional development of principals, teachers, and other staff; and

6. Periodically evaluate board and superintendent leadership, governance, and teamwork.

Education Code 11.1512(b)

Prohibited Interference

A superintendent may not interfere with an appearance or testimony of specified district personnel required by the board. *Education Code 11.1511(d)* [See BAA]

Certification of Compliance With Certain Laws

Do Not Hire Registry

Each year, the superintendent shall certify to the commissioner that the district has complied with the requirements of Education Code 22A.151 (registry of persons not eligible for employment in or provision of services to educational entities). *Education Code 22A.151(g)*

Diversity, Equity, and Inclusion and Instructional Prohibitions

Not later than September 30 each year, the superintendent shall certify to TEA that the district is in compliance with Education Code 39.008, 11.005, and 28.0022. *Education Code 39.008(a)* [See BT(LEGAL) for provisions related to certification requirements.]

Testimony Before SBOE

If the commissioner finds against a school district under Education Code 7.057 in at least five grievances to which that section applies involving the district during the school year, the superintendent must appear before the SBOE to testify regarding the commissioner's findings and the frequency of grievances against the district. *Education Code 26A.004*

Vacancy Posting

A district's employment policy must provide for notice to each current district employee of a vacant position for which a certificate is required. Notice must be provided not later than the fifth school day before the date on which a district fills the position. Notice shall be posted on:

1. A bulletin board at:
    a. A place convenient to the public in the district's central administrative office, and
    b. The central administrative office of each campus during any time the office is open; or
2. The district's internet website, if the district has a website.

A district shall provide each current district employee a reasonable opportunity to apply for the position.

Education Code 11.1513(d)

[See also DC(LEGAL)]

Names of Applicants

The name of an applicant for superintendent is excepted from disclosure under Chapter 552, Government Code (Public Information Act). However, a board must give public notice of the name or names of the finalists being considered for superintendent at least 21 days before the date of the meeting at which a final action or vote is to be taken on the employment of the person. *Gov't Code 552.126*

Required Reporting After Superintendent Change

Subsequent to a school system superintendent change, the direct contact information of the superintendent (or person acting in that capacity) must be updated in Sentinel within three business days of a corresponding board meeting. *19 TAC 103.1213(e)(3)(F)* [See CKA]

PROHIBITION ON DIVERSITY, EQUITY, AND INCLUSION ACTIVITIES BT (LEGAL)

Definitions

"Diversity, equity, and inclusion duties" means:

1. Influencing hiring or employment practices with respect to race, sex, color, or ethnicity except as necessary to comply with state or federal antidiscrimination laws;
2. Promoting differential treatment of or providing special benefits to individuals on the basis of race, color, or ethnicity;
3. Developing or implementing policies, procedures, trainings, activities, or programs that reference race, color, ethnicity, gender identity, or sexual orientation, except for the purpose of student recruitment efforts by colleges and universities designated as historically black colleges and universities in collaboration with school districts, or as necessary to comply with state or federal law;
4. Compelling, requiring, inducing, or soliciting any person to provide a diversity, equity, and inclusion statement or giving preferential consideration to any person based on the provision of a diversity, equity, and inclusion statement.

Education Code 11.005(a)

Prohibited Activities

Except as required by state or federal law, a district may not assign diversity, equity, and inclusion duties to any person and must prohibit a district employee, contractor, or volunteer from engaging in diversity, equity, and inclusion duties at, for, or on behalf on the district.

Discipline Policy

The 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 policy and procedure adopted by the 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.

Notice

The district shall provide a physical and electronic copy of the policy and procedure to each district employee or contractor.

Education Code 11.005(b)-(d)

Activities Not Prohibited

Nothing in this policy may be construed to:

1. Limit or prohibit a district from contracting with historically underutilized businesses or businesses owned by members of a minority group or by women in accordance with applicable state law;

2. Limit or prohibit a district from acknowledging or teaching the significance of state and federal holidays or commemorative months and how those holidays or months fit into the themes of history and the stories of this state and the United States of America in accordance with the TEKS adopted under Education Code, Subchapter A, Chapter 28;

3. Affect a student's rights under the First Amendment to the U.S. Constitution or Section 8, Article I, Texas Constitution;

4. Limit or prohibit a school district from analyzing school-based causes and taking steps to eliminate unlawful discriminatory practices as necessary to address achievement gaps and differentials described by Education Code 39.053; or

5. Apply to:

   a. Classroom instruction that is consistent with the TEKS adopted by the State Board of Education;

   b. The collection, monitoring, or reporting of data;

   c. A policy, practice, procedure, program, or activity intended to enhance student academic achievement or postgraduate outcomes that is designed and implemented without regard to race, sex, color, or ethnicity; or

   d. A student club that is in compliance with the requirements of Education Code 33.0815.

Education Code 11.005(e)

Certification Required

Not later than September 30 of each year, the superintendent of a school district shall certify to the Texas Education Agency (TEA) that the district is in compliance with Education Code 11.005 (prohibition on diversity, equity, and inclusion duties) and the instructional requirements and prohibitions under Education Code 28.0022 [see EMB]. The certification shall be submitted electronically. TEA shall post each certification received under Education Code 39.008(a) on TEA's website.

Requirements

The certification must include:

1. A description of the policies and procedures required by Education Code 11.005(c) and 28.0022(h) and the manner in which district employees and contractors were notified of those policies and procedures;

2. Any existing policies, programs, procedures, or trainings that were altered to ensure compliance with Education Code 39.008, 11.005, or 28.0022; and

3. Any cost savings resulting from actions taken by the school district to comply with this section.

Board Approval The certification required by Education Code 39.008(a) must be approved by a majority vote of the board at a public meeting that includes an opportunity for public testimony and for which notice was posted on the district's website at least seven days before the date on which the meeting is held.

Education Code 39.008

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 C: BUSINESS AND SUPPORT SERVICES

CA	FISCAL MANAGEMENT GOALS AND OBJECTIVES
CAA	Financial Ethics
CB	STATE AND FEDERAL REVENUE SOURCES
CBA	State
CBB	Federal
CC	LOCAL REVENUE SOURCES
CCA	Bond Issues
CCB	Time Warrants
CCC	Certificates of Indebtedness
CCD	Recreational Facilities Bonds
CCE	Athletic Stadium Authority
CCF	Loans and Notes
CCG	Ad Valorem Taxes
CCGA	Exemptions and Payments
CCGB	Economic Development
CCH	Appraisal District
CD	OTHER REVENUES
CDA	Investments
CDB	Sale, Lease, or Exchange of School-Owned Property
CDBA	Revenue Bonds from Proceeds
CDC	Gifts and Solicitations
CDD	Rentals and Service Charges
CDE	Shop Sales
CDF	Royalties
CDG	Gate Receipts, Concessions
CDH	Public and Private Facilities
CE	ANNUAL OPERATING BUDGET
CEA	Financial Exigency
CF	ACCOUNTING
CFA	Financial Reports and Statements
CFB	Inventories
CFC	Audits
CFD	Activity Funds Management
CFE	Payroll Procedures
CFEA	Salary Deductions and Reductions
CFF	Checking Accounts
CFG	Cash in School Buildings
CG	BONDED EMPLOYEES AND OFFICERS

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 C: BUSINESS AND SUPPORT SERVICES

CH	PURCHASING AND ACQUISITION
CHB	Petty Cash Account
CHD	Purchasing Procedures
CHE	Vendor Disclosures and Contracts
CHF	Payment Procedures
CHG	Real Property and Improvements
CHH	Financing Personal Property Purchases
CI	SCHOOL PROPERTIES DISPOSAL
CJ	CONTRACTED SERVICES
CJA	Background Checks and Required Reporting
CK	SAFETY PROGRAM/RISK MANAGEMENT
CKA	Safety and Security Audits and Monitoring
CKB	Accident Prevention and Reports
CKC	Emergency Plans
CKD	Emergency Medical Equipment and Procedures
CKE	Security Personnel
CKEA	Commissioned Peace Officers
CKEB	School Marshals
CKEC	School Resource Officers
CKED	Other Security Arrangements
CL	BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT
CLA	Security
CLB	Maintenance
CLC	Traffic and Parking Controls
CLD	Records and Reports
CLE	Required Displays
CM	EQUIPMENT AND SUPPLIES MANAGEMENT
CMA	Receiving and Warehousing
CMB	Authorized Uses of Equipment and Supplies
CMD	Instructional Materials Care and Accounting
CN	TRANSPORTATION MANAGEMENT
CNA	Student Transportation
CNB	District Vehicles
CNBA	Bus Maintenance
CNC	Transportation Safety
CO	FOOD AND NUTRITION MANAGEMENT
COA	Procurement
COB	Free and Reduced-Price Meals
COC	Vending Machines

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 C: BUSINESS AND SUPPORT SERVICES

CP	OFFICE MANAGEMENT
CPA	Office Communications
CPAA	Printing and Duplicating
CPAB	Mail and Delivery
CPAC	Telephone
CPC	Records Management
CQ	TECHNOLOGY RESOURCES
CQA	District, Campus, and Classroom Websites
CQB	Cybersecurity
CQC	Equipment
CQD	Artificial Intelligence
CR	INSURANCE AND ANNUITIES MANAGEMENT
CRA	Property Insurance
CRB	Liability Insurance
CRD	Health and Life Insurance
CRE	Workers' Compensation
CRF	Unemployment Insurance
CRG	Deferred Compensation and Annuities
CS	FACILITY STANDARDS
CSA	Safety and Security
CSB	Gas and Pipelines
CSC	Asbestos Management
CT	FACILITIES PLANNING
CV	FACILITIES CONSTRUCTION
CVA	Competitive Bidding
CVB	Competitive Sealed Proposals
CVC	Construction Manager-Agent
CVD	Construction Manager-at-Risk
CVE	Design-Build
CVF	Job Order Contracts
CW	NAMING FACILITIES
CX	CONTRACTS FOR FACILITIES
CY	INTELLECTUAL PROPERTY

Available School Fund

The available school fund is apportioned annually to Texas counties according to the scholastic population of each. *Education Code 43.001(b)*

Foundation School Program

The purposes of the Foundation School Program (FSP) set forth in Education Code Chapter 48 are to guarantee that each district in the state has:

1. Adequate resources to provide each eligible student a basic instructional program and facilities suitable to the student's educational needs; and
2. Access to a substantially equalized program of financing in excess of basic costs for certain services, as provided by that chapter.

The FSP consists of:

1. Two tiers that in combination provide for:
    a. Sufficient financing for all school districts to provide a basic program of education that is rated acceptable or higher under Education Code 39.054 and meets other applicable legal standards; and
    b. Substantially equal access to funds to provide an enriched program; and
2. A facilities component as provided by Education Code Chapter 46. [See CCA]

Education Code 48.002

The cost of the FSP for a district is the total sum of:

1. The sum of the tier one allotments and other funding as follows:
    a. The basic allotment under Education Code Chapter 48, Subchapter B;
    b. The student-based allotments under Education Code Chapter 48, Subchapter C; and
    c. The additional funding under Education Code Chapter 48, Subchapter D (including the transportation allotment [see CNA] and the new instructional facility allotment below); and
2. The tier two allotment under Education Code Chapter 48, Subchapter E.

The sum of the FSP maintenance and operations costs for all accredited school districts in this state constitutes the total maintenance and operations cost of the FSP.

The FSP shall be financed by:

1. State available school funds distributed in accordance with the law;
2. Ad valorem tax revenue generated by local school district effort [see CCG series]; and
3. State funds appropriated for the purposes of public school education and allocated to each district in an amount sufficient to finance the cost of each district's FSP not covered by other funds specified.

Education Code 48.251

PEIMS

A district shall participate in the Public Education Information Management System (PEIMS) and shall provide through that system information required for the administration of Education Code Chapter 48 (Foundation School Program) and of other appropriate provisions of the Education Code. Data standards, established by the commissioner of education, shall be used by a district to submit required information. *Education Code 48.008; 19 TAC 55.1001(b)*

Allotment for Basic Costs

A district is entitled to an annual allotment of $106 for each student enrolled in the district. Money allocated may be used only to pay costs associated with:

1. Transportation;
2. Hiring retired teachers;
3. Providing health insurance and employee benefits and paying for payroll taxes;
4. Contributions and other costs under Government Code, Subchapter E, Chapter 825 (Teacher Retirement System);
5. Utilities; and
6. Property and casualty insurance.

Education Code 48.161

New Instructional Facility Allotment (NIFA)

A district is entitled to an additional allotment as provided by Education Code 48.152 for operational expenses associated with opening a new instructional facility. A district entitled to an allotment may use funds from the district's allotment to renovate an ex-

isting instructional facility to serve as a dedicated cybersecurity computer laboratory. *Education Code 48.152*

Definitions

"Instructional facility" means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by Education Code 28.002. *Education Code 46.001, 48.152(a)(1); 19 TAC 61.1034(a)(2)* [See CCA for the Instructional Facilities Allotment]

"New instructional facility" is a facility that includes:

1. A newly constructed instructional facility, which is a new instructional campus built from the ground up;
2. A repurposed instructional facility, which is a facility that has been renovated to become an instructional facility for the first time for the applying school district;
3. A leased facility operating for the first time as an instructional facility with a minimum lease term of not less than 10 years. The lease must not be a continuation of or renegotiation of an existing lease for an instructional facility; or
4. A renovated portion of an instructional facility to be used for the first time to provide high-cost and undersubscribed career and technology education programs, as determined by the commissioner.

Education Code 48.152(a)(2); 19 TAC 61.1034(a)(3)

Eligibility

The following eligibility criteria apply to the NIFA in accordance with Education Code 48.152.

1. The facility for which NIFA funds are requested must meet the following requirements:
    a. The facility must qualify as an instructional campus and a new instructional facility used for teaching the curriculum required by Education Code Chapter 28.
    b. To qualify for first-year funding, a new facility must not have been occupied in the prior school year. To qualify for follow-up funding, the facility must have been occupied for the first time in the prior school year and funded for the NIFA for that first year. If an instructional facility qualifies as a new instructional facility but did not receive the allotment in the first year of eligibility due to a failure to apply, the school district or open-enrollment charter school may still apply for and receive funding for the average daily attendance (ADA) earned only during the

second year of occupation in the new instructional facility.

c. With the exception of a covered walkway connecting the new facility to another building, the new facility must be physically separate from other existing school structures.

d. Career and technical education (CTE) campuses must report each CTE campus student's ADA when the ADA for that student is reported at the student's home campus.

2. Expansion or renovation of existing instructional facilities, as well as portable and temporary structures, are not eligible for the NIFA.

3. All instructional buildings on the campus must be newly constructed as new instructional facilities, except for an existing gymnasium that remains on the campus and will be utilized on the instructional campus.

Application Process

To apply for the NIFA, a district must complete the Texas Education Agency's (TEA) online application process requesting funding pursuant to the NIFA.

The initial (first-year) application, or an application for one-year funding only, must be submitted electronically no later than July 15. The application must include the following:

1. The electronic submission of TEA's online application for initial funding; and

2. The electronic submission of the following materials:

a. A brief description and photograph of the newly constructed, repurposed, or leased instructional facility;

b. A copy of a legal document that clearly describes the nature and dates of the new or repurposed construction or a copy of the applicable lease;

c. A site plan;

d. A floor plan; and

e. If applicable, a demolition plan.

Second-year applications require only the electronic submission of TEA's online application for follow-up funding no later than July 15 of the year preceding the applicable school year.

Survey on Days of Instruction

In the fall of the school year after a school year for which an applicant received NIFA funds, the district that received the funds must complete an online survey on the number of instructional days held in the new facility and submit the completed survey electronically. TEA will use submitted survey information in determining the final (settle-up) amount earned by each eligible school district, as described by 19 Administrative Code 61.1034(e)(6).

Costs and Payments

The costs and payments for the NIFA are determined by the commissioner.

The allotment for the NIFA is a part of the cost of the first tier of the FSP. This allotment is not counted in the calculation of weighted average daily attendance for the second tier of the FSP.

If, for all eligible applicants combined, the total cost of the NIFA exceeds the amount appropriated, each allotment is reduced so that the total amount to be distributed equals the amount appropriated. Reductions to allotments are made by applying the same percentage adjustment to each school district.

Allocations will be made in conjunction with allotments for the FSP in accordance with the school district's payment class. For school districts that are subject to the excess local revenue provisions under Education Code 48.257, and do not receive payments from the Foundation School Fund, NIFA distributions will be reflected as reduced recapture payments.

For school districts that are subject to the excess local revenue provisions under Education Code 48.257, NIFA distributions increase the amount of the FSP entitlement and so will automatically reduce any excess local revenue and reduce the requirement to send recapture to the state in the amount of the NIFA allocation.

For all school districts receiving the NIFA, a final (settle-up) amount earned is determined by the commissioner when information reported through the survey described above is available in the fall of the school year after the school year for which NIFA funds were received. [See Survey on Days of Instruction, above] The final amount earned is determined using the submitted survey information and final counts of ADA for the school year for which NIFA funds were received, as reported through PEIMS.

The amount of funds to be distributed for the NIFA to a school district is in addition to any other state aid entitlements.

19 TAC 61.1034(b)-(e)

Table of Contents

Bonds and Bond Taxes....3
Limitation....3
Use of Proceeds for Utilities....3
Use of Proceeds for Safety....4
State Facilities Funding....4
Investment of Bond Proceeds....5
Unspent Bond Proceeds....5
Capital Appreciation Bonds....5
Limitation on Issuance....5
Limitation on Use of Proceeds....7
Total Amount of Capital Appreciation Bonds....7
Extension....7
Bond Elections....7
Call for Election....8
Election Order....8
Election Notice....9
Propositions....9
Voter Information....11
Electioneering and Political Advertising....12
Bond Databases....13
Comptroller Bond Database....13
Bond Review Board Bond Database....14
Texas Education Agency Bond Database....15
50 Cent Test for New Debt....16
Future Taxable Value....16
Attorney General Review and Approval....17
Electronic Submission and Delivery....17
Refunding Bonds....17
Instructional Facilities Allotment for Refunding Bonds....18
Authorized Unissued Bonds....18
Bond Guarantee Program....18
Eligibility....18
Application....18
Credit Enhancement Program....19

Eligibility 19
Application 20
Authority to Contract for Services 20
Federal Securities Law 21
Disclosure Obligations for Bond and Other Debt Offerings 21
Continuing Disclosure after Issuing Bonds 21
Liability under Federal Securities Law 21

Bonds and Bond Taxes

The board may issue bonds for:

1. The construction, acquisition, and equipment of school buildings in the district;
2. The acquisition of property or the refinancing of property under a contract entered under the Public Property Finance Act (Local Government Code, Chapter 271, Subchapter A), regardless of whether payment obligations under the contract are due in the current year or a future year;
3. The purchase of the necessary sites for school buildings;
4. The purchase of new school buses;
5. The retrofitting of school buses with emergency, safety, or security equipment; and
6. The purchase or retrofitting of vehicles to be used for emergency, safety, or security purposes.

The board may levy, pledge, assess, and collect annual ad valorem taxes sufficient to pay the principal of and interest on the bonds as or before the principal and interest become due, subject to the provisions at Bond Elections, below.

Education Code 45.001(a)

All bonds shall be issued in accordance with the Public Security Procedures Act. *Gov't Code, Ch. 1201*

Limitation

A district may not issue general obligation bonds to purchase, improve, or construct one or more improvements to real property, to purchase one or more items of personal property, or to do both, if the weighted average maturity of the issue of bonds exceeds 120 percent of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds. *Gov't Code 1253.002*

Use of Proceeds for Utilities

The proceeds of bonds issued by school districts for the construction and equipment of school buildings in the district and the purchase of the necessary sites for school buildings may be used, among other things, to pay the cost of acquiring, laying, and installing pipes or lines to connect with the water, sewer, or gas lines of a municipality or private utility company, whether or not the water, sewer, or gas lines adjoin the school, so that the school district may provide its public school buildings the water, sewer, or gas services. *Education Code 45.101*

Use of Proceeds for Safety

The proceeds of bonds issued by a school district for the construction and equipment of school buildings in the district and the purchase of the necessary sites for school buildings may be used to pay the costs associated with complying with school safety and security requirements for school facilities in accordance with Education Code 37.351. [See CKA]

A district that has been determined by the Texas Education Agency (TEA) to not be in compliance with safety and security requirements must use the proceeds of bonds described above to achieve compliance with applicable safety and security requirements in accordance with Education Code 37.351 before the district may use those proceeds for any other authorized purpose.

Education Code 45.1011

State Facilities Funding

“Instructional facility” means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the required curriculum. *Education Code 46.001*

Instructional Facilities Allotment

Under the Instructional Facilities Allotment, Education Code Chapter 46, Subchapter A, for each year, except as provided by Education Code 46.005 (limitation on the guaranteed amount) and 46.006 (shortage or excess of appropriated funds), a district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the statutory maximum in Education Code 46.003(b), to pay the principal of and interest on eligible bonds issued to construct, acquire, renovate or improve an instructional facility. *Education Code 46.003(a)* [See 19 Administrative Code 61.1032 for commissioner’s rules related to the instructional facilities allotment.]

Existing Debt Allotment

A district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal and interest on eligible bonds under Education Code Chapter 46, Subchapter B. Bonds are eligible to be paid with state and local funds under Subchapter B if the district made payments on the bonds during the final school year of the preceding state fiscal biennium or taxes levied to pay the principal and interest on the bonds were included in a district’s audited debt service collections for that school year, and the district does not receive state assistance under the Instructional Facilities Allotment for payment of the principal and interest on the bonds. *Education Code 46.032(a), .033* [See 19 Administrative Code 61.1035 for commissioner’s rules related to the existing debt allotment.]

Note: For information on the new instructional facility allotment, see CBA.

Investment of Bond Proceeds

For legal requirements regarding investment of bond proceeds, see CDA(LEGAL).

Unspent Bond Proceeds

A district may use unspent proceeds of issued general obligation bonds only:

1. For the specific purposes for which the bonds were authorized;
2. To retire the bonds; or
3. For a purpose other than the specific purposes for which the bonds were authorized if:
    a. The specific purposes are accomplished or abandoned; and
    b. The board at a public meeting held only for the purpose of considering the use of the unspent bond proceeds approves in separate votes the use of the proceeds for:
        (1) A purpose other than to retire the bonds; and
        (2) The purpose specified at the time the vote is taken.

In addition to other requirements, notice of a public meeting held under this provision must include a statement that the board will consider the use of unspent bond proceeds for a purpose other than the specific purposes for which the bonds were authorized. A public meeting held under this provision must provide the public an opportunity to address the board on the question of using the unspent bond proceeds for a purpose other than the specific purposes for which the bonds were authorized.

Education Code 45.1105

Capital Appreciation Bonds

For purposes of the following policy provisions, a “capital appreciation bond” is a bond that accrues and compounds interest from its date of delivery, the interest on which by its terms is payable only upon maturity or prior redemption.

Limitation on Issuance

A school district may not issue capital appreciation bonds that are secured by ad valorem taxes unless:

1. The bonds have a scheduled maturity date that is not later than 20 years after the date of issuance;

2. The board has received a written estimate of the cost of the issuance, including:

    a. The amount of principal and interest to be paid until maturity;

    b. The amount of fees to be paid to outside vendors, including vendors who sell products to be financed by the bond issuance;

    c. The amount of fees to be paid to each financing team member; and

    d. The projected tax impact of the bonds and the assumptions on which the calculation of the projected tax impact is based;

3. The board has determined in writing whether any personal or financial relationship exists between the members of the board and any financial advisor, bond counsel, bond underwriter, or other professional associated with the bond issuance and submitted the determination to the Ethics Commission; and

4. The board posts prominently on the district's internet website and enters in the minutes of the board:

    a. The total amount of the proposed bonds;

    b. The length of maturity of the proposed bonds;

    c. The projects to be financed with bond proceeds;

    d. The intended use of bond proceeds not spent after completion of the projects identified;

    e. The total amount of the district's outstanding bonded indebtedness at the time of the election on the bonds, including the amount of principal and interest to be paid on existing bond indebtedness until maturity;

    f. The total amount of the district’s outstanding bonded indebtedness, including the amount of principal and interest to be paid until maturity; and

    g. The information received at item 2 above and determined under item 3 above.

The board shall regularly update the debt information posted on the district’s internet website under item 4.f above to ensure that the information is current and accurate.

Limitation on Use of Proceeds

Capital appreciation bond proceeds may not be used to purchase the following items, unless an item has an expected useful life that exceeds the bond's maturity date:

1. Items more regularly considered maintenance items, including replacement HVAC units, upgraded plumbing, or similar items; or
2. Transportation-related items, including buses.

Unspent Proceeds

Capital appreciation bond proceeds unspent after completion of the project identified as the proceeds' intended use may be used only for a use identified on the district's website as required above, unless another use is approved by the voters of the district at an election held for that purpose.

Total Amount of Capital Appreciation Bonds

The total amount of capital appreciation bonds may not exceed 25 percent of the district's total outstanding bonded indebtedness at the time of the issuance, including the amount of principal and interest to be paid on the outstanding bonds until maturity.

Extension

A district may not extend the maturity date of an issued capital appreciation bond, including through the issuance of refunding bonds that extend the maturity date, unless:

1. The extension of the maturity date will decrease the total amount of projected principal and interest to maturity; or
2. The maximum legally allowable tax rate for indebtedness has been adopted and TEA certifies in writing that the solvency of the permanent school fund's bond guarantee program would be threatened without the extension.

Gov't Code 1201.0245

The foregoing provisions of Government Code 1201.0245 do not apply to the issuance of refunding bonds under Government Code Chapter 1207 or capital appreciation bonds for the purpose of financing transportation projects. *Gov't Code 1201.0245(j)*

Bond Elections

Bonds may not be issued and taxes may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election held for such purpose, at the expense of the district, in accordance with the Election Code, except as provided by Education Code 45.003. The election shall be called by resolution or order of the board. The resolution or order must state the date of the election, the proposition or propositions to be submitted and voted on, the polling place or places, and any other matters considered necessary or advisable by the board. *Education Code 45.003(a)*

Each special election in this state shall be held on one of the following dates:

1. The first Saturday in May; or
2. The first Tuesday after the first Monday in November.

Election Code 41.001(a) [See BBB]

Call for Election

For an election to be held on a uniform election date, the election shall be ordered not later than the 78th day before election day. *Election Code 3.005* [See BBBA]

Election Order

In addition to other legal requirements regarding the election order [see BBBA(LEGAL)], the document ordering an election to authorize a district to issue debt obligations must distinctly state:

1. The proposition language that will appear on the ballot;
2. The purpose for which the bonds are to be authorized;
3. The principal amount of the bonds to be authorized;
4. That taxes sufficient to pay the principal of and interest on the bonds may be imposed;
5. The estimated tax rate if the bonds are authorized or the maximum interest rate of the bonds or any series of the bonds, based on the market conditions at the time of the election order;
6. The maximum maturity date of the bonds to be authorized or that the bonds may be issued to mature over a specified number of years not to exceed the maximum number of years authorized by law;
7. The aggregate amount of the outstanding principal of the district's debt obligations as of the date the election is ordered;
8. The aggregate amount of the outstanding interest on the district's debt obligations as of the date the election is ordered, which may be based on the district's expectations relative to variable rate debt obligations; and
9. The district's ad valorem debt service tax rate at the time the election is ordered, expressed as an amount per $100 valuation of taxable property.

Election Code 3.009(b)

Posting

The election order must be posted:

1. On election day and during early voting by personal appearance, in a prominent location at each polling place;
2. Not later than the 21st day before the election in three public places in the boundaries of the district; and
3. During the 21 days before the election, on the district's internet website, prominently and together with the notice of the election, the contents of the proposition, and any sample ballot prepared for the election, if the district maintains an internet website.

Election Code 4.003(f) [See Voter Information, below]

Election Notice

The notice of election must comply with Election Code Chapter 4. [For specific requirements regarding contents of the election notice, see BBBA(LEGAL).]

Publication and Posting

The notice of election must be published and posted in accordance with Election Code requirements. [For specific requirements regarding publication and posting, see BBBA(LEGAL).]

Notice to Election Officials

Notice must be given to the county clerk, voter registrar, and election judge in accordance with Election Code Chapter 4. [For specific requirements, see BBBA(LEGAL).]

Propositions

A proposition submitted to authorize the issuance of bonds must include the question of whether the board may levy, pledge, assess, and collect annual ad valorem taxes, on all taxable property in the district, either:

1. Sufficient, without limits as to rate or amount, to pay the principal of and interest on said bonds; or
2. Sufficient to pay the principal of and interest on the bonds, provided that the annual aggregate bond taxes in the district may never be more than the rate stated in the proposition.

The ballot proposition must include the following statement: "THIS IS A PROPERTY TAX INCREASE."

Education Code 45.003(b), (b-1)

A district that submits to the voters a proposition for the approval of the issuance of debt obligations shall prescribe the wording of the proposition that is to appear on the ballot in accordance with the requirements of Government Code Chapter 1251, Subchapter B. *Election Code 52.072(f)*

A proposition must substantially submit the question with such definiteness, certainty, and facial neutrality that the voters are not misled. *Election Code 52.072(g)*

The district shall assign a letter to each measure on the ballot that corresponds to its order on the ballot. Each proposition on the ballot must identify the name of the authority ordering the election on the measure. *Election Code 52.095*

Ballot Contents

The ballot for a measure seeking voter approval of the issuance of debt obligations by a district shall specifically state:

1. A plain language description of the single specific purposes for which the debt obligations are to be authorized;
2. The total principal amount of the debt obligations to be authorized; and
3. That taxes sufficient to pay the principal of and interest on the debt obligations will be imposed.

Each single specific purpose for which debt obligations requiring voter approval are to be issued must be printed on the ballot as a separate proposition. A proposition may include as a specific purpose one or more structures or improvements serving the substantially same purpose and may include related improvements and equipment necessary to accomplish the specific purpose.

Gov't Code 1251.052(a)-(a-1)

Exception

Notwithstanding the requirements at Ballot Contents, above, the question of whether to approve the issuance of bonds for the construction, acquisition, and equipment of school buildings in the district, the purchase of new school buses, and the purchase of necessary sites for school buildings may be submitted to the voters in a single ballot proposition, except that bonds for each of the following purposes must be stated in a separate proposition:

1. The construction, acquisition, or equipment of:
    a. A stadium with seating capacity for more than 1,000 spectators;
    b. A natatorium;
    c. Another recreational facility other than a gymnasium, playground, or play area;
    d. A performing arts facility;

e. Housing for teachers as determined by the district to be necessary to have a sufficient number of teachers for the district; and

2. An acquisition or update of technology equipment, other than equipment used for school security purposes or technology infrastructure integral to the construction of a facility.

The question of whether to approve the issuance of bonds for a building described by items 1a-e above must be printed on the ballot as a separate ballot proposition regardless of whether that building is proposed as part of the same complex or building that contains traditional classroom facilities. Each separate ballot proposition must state the principal amount of the bonds to be issued that constitutes the cost for construction of that portion of the building or complex attributable to the building described by items 1a-e above or to the traditional classroom facilities, as applicable.

Education Code 45.003(g)-(h)

Definition "Debt obligation" means a public security, as defined by Government Code 1201.002, secured by and payable from ad valorem taxes. The term does not include public securities that are designated as self-supporting by the political subdivision issuing the securities. *Gov't Code 1251.051(1)*

Voter Information A district with at least 250 registered voters on the date the board adopts the debt obligation election order must prepare a voter information document for each proposition to be voted on at the election.

Posting Requirements The district shall post the voter information document in the same manner as a debt obligation election order is required to be posted under Election Code 4.003(f) [see Posting, above] and may include the voter information document in the debt obligation election order.

A district that maintains an internet website shall provide the information described at Contents, below, on its website in an easily accessible manner beginning not later than the 21st day before election day and ending on the day after the date of the debt obligation election.

Contents The voter information document must distinctly state:

1. The language that will appear on the ballot;

2. The following information formatted as a table:

   a. The principal of the debt obligations to be authorized;

b. The estimated interest for the debt obligations to be authorized;

c. The estimated combined principal and interest required to pay on time and in full the debt obligations to be authorized; and

d. As of the date the district adopts the debt obligation election order:

(1) The principal of all outstanding debt obligations of the district;

(2) The estimated remaining interest on all outstanding debt obligations of the district, which may be based on the district's expectations relative to the interest due on any variable rate debt obligations; and

(3) The estimated combined principal and interest required to pay on time and in full all outstanding debt obligations of the district, which may be based on the district's expectations relative to the interest due on any variable rate debt obligations;

3. The estimated maximum annual increase in the amount of taxes that would be imposed on a residence homestead in the district with an appraised value of $100,000 to repay the debt obligations to be authorized, if approved, based upon assumptions made by the board; and

4. Any other information that the board considers relevant or necessary to explain the information required by these provisions.

Assumptions

The board shall identify in the voter information document the major assumptions made in connection with the statement required by item 3 above, including:

1. The amortization of the district's debt obligations, including outstanding debt obligations and the proposed debt obligations;

2. Changes in estimated future appraised values within the district; and

3. The assumed interest rate on the proposed debt obligations.

Gov't Code 1251.052(b)-(d)

Electioneering and Political Advertising

For additional information and prohibitions related to electioneering and political advertising, see BBBD(LEGAL).

Bond Databases

Comptroller Bond Database

The comptroller shall consult and coordinate with the Bond Review Board (BRB) to develop and maintain a database of current and historical information regarding bonds issued by each taxing unit in this state, which must include for each bond proposed or issued by a district:

1. The language of the ballot proposition to approve the bond, if the bond was or will be submitted to the voters of the district at an election held for that purpose;
2. The projected interest and sinking fund tax rate or projected tax rate for debt service, as applicable, associated with a proposed bond;
3. The result of any election held for the purpose of approving the issuance of a proposed bond;
4. A list of the projects to be funded using the bond;
5. An accounting of the use of the proceeds of any issued bond, including a description of any project paid for with the proceeds;
6. A description of any increase in the interest and sinking fund tax rate or tax rate for debt service, as applicable, resulting from the issuance of a bond; and
7. An estimate of the minimum dollar amount required to be spent annually for debt service resulting from the issuance of a bond.

Data to the Comptroller

For purposes of the database, a district shall provide to the comptroller data for each proposed bond independent of any other proposed bond, bond refinancing, or ad valorem tax rate change.

By August 7 or as soon thereafter as practicable, a district shall provide to the comptroller the information described above for the current tax year and any other information requested by the comptroller for the purpose of maintaining the database.

Note: The following requirement expires January 31, 2026.

Not later than January 1, 2026, a district shall provide to the comptroller all available current and historical information described above for the 2015 through 2025 tax years.

Gov't Code 403.702

Enforcement and Civil Penalty

If a district does not provide information to the comptroller as required, the comptroller shall send written notice to the district:

1. Describing the information the district is required to provide to the comptroller; and

2. Informing the district that the district is liable for a civil penalty if the district does not provide the required information on or before the 30th day after the date the comptroller sends the written notice.

If a district does not provide the required information, the district is liable to the state for a civil penalty of $1,000. The attorney general may bring an action to recover the civil penalty. It is a defense to an action that a district provided the required information or documents to the extent the information or documents are not exempt from disclosure or confidential under Government Code Chapter 552 (Public Information Act).

Gov't Code 403.704

Bond Review Board Bond Database

The BRB shall develop and maintain on its internet website a publicly accessible and searchable database that provides, in a table format that is easy to read and understand, information on each bond proposed or issued by a local government, including:

1. The amount of the principal of the bond;

2. The estimated amount of interest on the bond;

3. The estimated total amount to pay the principal of and interest on the bond; and

4. The estimated minimum dollar amount required to be annually expended for debt service.

Gov't Code 1231.024

Report Before an Election

Not later than the 20th day before election day for an election to authorize a district to issue bonds, the district shall submit a report to the BRB that includes:

1. The date of the election;

2. The proposition number for each bond proposition;

3. The total estimated cost of the issuance of each proposed bond;

4. The estimated minimum dollar amount required to be annually expended for debt service;

5. A description of the purpose of each bond proposition; and

6. Any other information the BRB determines necessary.

Report After an Election

Not later than the 20th day after election day for an election to authorize a district to issue bonds, the district shall submit a report to the BRB that includes:

1. The total number of votes cast for each bond proposition;
2. The total number of votes in support of the bond proposition;
3. The total number of votes against the bond proposition;
4. Any updated information different from the information provided to the BRB under Government Code 1231.025(a), if applicable; and
5. Any other information the BRB determines necessary.

Gov't Code 1231.025

Annual Report on Unissued Bonds

Not later than September 30 of each year, a district with voter-approved but unissued bonds shall submit a report to the BRB regarding the amount of voter-approved but unissued bonds authorized by the district during the most recent fiscal year. The report must include:

1. The total amount of voter-approved but unissued bonds authorized by the district;
2. The specific statute or law authorizing the issuance of the bonds;
3. The number of the propositions that authorized the issuance of the bonds, as applicable;
4. The estimated cost of the issuance of the bonds on the bond proposition, as applicable;
5. The estimated minimum dollar amount required to be annually expended for debt service after the issuance of the bonds; and
6. Any other information the BRB determines necessary.

Gov't Code 1231.026

Texas Education Agency Bond Database

TEA shall develop and maintain a database that includes current information regarding school district bonds, taxes, and bond-related projects, including:

1. The language of the ballot proposition under Education Code 45.003(b) [See Bond Elections, above];
2. The projected interest and sinking fund tax rate associated with a proposed bond;

3. The result of an election held for the purpose of issuing a proposed bond;

4. A list of the projects to be funded using the bond;

5. An accounting of the use of the proceeds of any issued bond, including descriptions of any projects paid for with the proceeds;

6. Other data related to capital projects, such as new or renovated facilities, funded wholly or partly using the bond, including data regarding funding sources for the projects, project costs, project budget, and project size; and

7. Any increase in the interest and sinking fund tax rate resulting from issued bonds;

The database must have a report generation function to allow the agency to generate reports of the information described above, for each school district, disaggregated by geographic area; and a function that allows for the proposal of updates or corrections to the information included in the database.

A school district shall provide TEA with the information described above and any other information requested for the purpose of maintaining the database.

TEA shall transmit the information described above to the BRB to satisfy the district reporting requirements under Government Code 1231.025. [See Bond Review Board Database, above]

Education Code 45.114

50 Cent Test for New Debt

Before issuing bonds, a district must demonstrate to the attorney general that, with respect to the proposed issuance, the district has a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds, other than bonds authorized to be issued at an election held on or before April 1, 1991, and issued before September 1, 1992, from a tax at a rate not to exceed $0.50 per $100 of valuation (the “50 Cent Test”).

A district may demonstrate the ability to comply with the 50 Cent Test by using the most recent taxable value of property in the district, combined with state assistance to which the district is entitled under Education Code Chapter 46 or 48 that may be lawfully used for the payment of bonds.

Future Taxable Value

A district may demonstrate the ability to comply with the 50 Cent Test by using a projected future taxable value of property in the district anticipated for the earlier of the tax year five years after the current tax year or the tax year in which the final payment is due

for the bonds submitted to the attorney general, combined with state assistance to which the district is entitled under Education Code Chapter 46 or 48 that may be lawfully used for the payment of bonds.

The district must submit to the attorney general a certification of the district's projected taxable value prepared by a registered, certified professional appraiser who has demonstrated professional experience in projecting taxable values or who can obtain any necessary assistance from an experienced person.

The certification of a district's projected taxable value must be signed by the superintendent. The attorney general must base a determination of whether a district has complied with the 50 Cent Test on a taxable value that is equal to 90 percent of the value certified.

Education Code 45.0031

Attorney General Review and Approval

Unless exempt under Government Code 1202.007, before the issuance of a public security, the issuer shall submit the public security and the record of proceedings to the attorney general. *Gov't Code 1202.003(a); see, e.g., 1 TAC 53.3 (Content of Transcripts), 53.16 (Submission and Approval of Transcripts), and 53.61 (School District Tax Bond Elections)*

Electronic Submission and Delivery

An issuer shall submit to the attorney general the following documents, including any related correspondence or supplemental information, in an electronic format and accompanied by an electronic signature, if applicable:

1. A public security, record of proceedings, or credit agreement required to be submitted to the attorney general for approval under Government Code 1202.003; and

2. An amendment to a public security, record of proceedings, or credit agreement approved or registered under Government Code Chapter 1202.

Gov't Code 1202.0035(b)

Refunding Bonds

A board may refund or refinance all or any part of any of the district's outstanding bonds and matured or unmatured but unpaid interest on those bonds payable from ad valorem taxes by issuing refunding bonds payable from ad valorem taxes. *Education Code 45.004; Gov't Code Ch. 1207*

Instructional Facilities Allotment for Refunding Bonds

A district may use state funds received under Education Code Chapter 46 to pay principal of and interest on refunding bonds that:

1. Are issued to refund bonds eligible under Education Code 46.003;
2. Do not have a final maturity date later than the final maturity date of the bonds being refunded;
3. May not be called for redemption earlier than the earliest call date of all bonds being refunded; and
4. Result in a present value savings as defined in Education Code 46.007(4).

Education Code 46.007

Authorized Unissued Bonds

If a district has authorized school bonds for a specific purpose and that purpose has been accomplished by other means or has been abandoned and all or a portion of the authorized bonds remains unissued, a board may order an election [see BBBA] to submit to the qualified voters of the district the proposition of whether or not the authorized but unissued bonds may be issued, sold, and delivered for other and different purposes specified in the election order and notice. The election shall be ordered, held, and conducted in the same form and manner as that at which the bonds were originally authorized. If a majority of those voting at the election vote in favor of the sale and delivery of the unissued bonds for the purposes specified in the election order and notice, the board may issue, sell, and deliver the bonds and use the proceeds for the purposes authorized at the election. *Education Code 45.110*

Bond Guarantee Program

Eligibility

A district seeking guarantee of eligible bonds under the Bond Guarantee Program shall apply to the commissioner of education using a form adopted by the commissioner. To be eligible for approval, district bonds must be issued under Education Code Chapter 45, Subchapter A, or under Government Code Chapter 1207. *Education Code 45.054, .055(a); 19 TAC 33.6(b)(5)*

Application

An application must include:

1. The name of the district and the principal amount of the bonds to be issued;
2. The name and address of the district's paying agent, which means the financial institution designated by a district as its agent for payment of principal and interest on guaranteed bonds; and

3. The maturity schedule, estimated interest rate, and date of the bonds.

Education Code 45.051(2), .055

An application must be accompanied by a fee set by rule of the State Board of Education. *Education Code 45.055(c); 19 TAC 33.6(f)(1)*

On approval by the commissioner, bonds issued by a district are guaranteed by the corpus and income of the permanent school fund. The guarantee remains in effect until the date those bonds mature or are defeased in accordance with state law. *Education Code 45.052*

If a district does not receive approval for the guarantee or for any reason does not receive approval of the bonds from the attorney general within the specified time period, the district may reapply in a subsequent month. Applications that were denied approval for the guarantee will not be retained for consideration in subsequent months. *19 TAC 33.6(f)(5)*

A district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee. *19 TAC 33.6(g)(4)(D)*

Credit Enhancement Program

If a district's application for guarantee of district bonds by the permanent school fund is rejected, the district may apply under Education Code Chapter 45, Subchapter I for credit enhancement of bonds described by Education Code 45.054 (eligibility for the Bond Guarantee Program) by money appropriated for the Foundation School Program, other than money that is appropriated to districts specifically:

1. As required under the Texas Constitution; or

2. For assistance in paying debt service.

The credit enhancement remains in effect until the date the bonds mature or are defeased in accordance with state law.

Education Code 45.252

Eligibility

To be eligible for approval by the commissioner for credit enhancement:

1. Bonds must be issued in the manner provided by Education Code 45.054;

2. Payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year;

3. The district's lowest credit rating from any credit rating agency may not be the same as or higher than that of the School District Bond Enhancement Program;

4. The bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in 19 Administrative Code 61.1038(b)(10), for the term of the bonds by the number of years in the amortization schedule; and

5. The district must agree in its application that the total annual debt service on bonds approved for the credit enhancement will be paid on or before August 15 of each state fiscal year.

Education Code 45.254; 19 TAC 61.1038(f)

Application

A district seeking credit enhancement of eligible bonds shall apply to the commissioner using a form adopted by the commissioner for the purpose. The application must:

1. Include the information required by Education Code 45.055(b), at Bond Guarantee Program—Application, above; and

2. Be accompanied by a fee set by the State Board of Education. *19 TAC 61.1038(d)(1)*

Education Code 45.255

The district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

If a district does not receive a credit enhancement or for any reason does not receive approval of the bonds from the attorney general within the specified time period, the district may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.

A district may not represent the bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval for the credit enhancement.

19 TAC 61.1038(e)(1), (8), (10)

Authority to Contract for Services

An issuer has exclusive authority to select, contract with, and determine the basis for compensation of a person to provide legal and other services as may be determined by the issuer to be nec-

essary in connection with the issuer's issuance of public securities or administration of its affairs that pertain to the issuance of public securities. The selection of legal counsel shall be made in accordance with the provisions of Government Code Chapter 2254, Subchapter A, applicable to the selection by a governmental entity of a provider of professional engineering services. *Gov't Code 1201.027(a)* [See CH(LEGAL) regarding contingent fee contracts for legal services and Government Code 2254.102(e) for additional requirements.]

Federal Securities Law

Prior to publicly offering bonds, a school district must prepare and deliver to an underwriter an official statement containing the terms of the bond offering, a description of the district itself, financial and operating data of the district, and any other information that may be material to an investor interested in purchasing the district's bonds or otherwise required by Rule 15c2-12 of the Securities Exchange Commission (SEC) (SEC Rule 15c2-12(b)). *17 C.F.R. 240.15c2-12* [See Note, below]

Disclosure Obligations for Bond and Other Debt Offerings

Except for exempt offerings, SEC Rule 15c2-12(b) requires underwriters to obtain a continuing disclosure agreement (CDA) from the district when the district issues bonds. A CDA obligates the district to prepare and file continuing disclosures of financial information and operating data annually after the bonds are issued. A CDA also requires filing notice regarding the occurrence of events listed under SEC Rule 15c2-12(b)(5)(i)(C) within 10 business days following the occurrence of any such event. *17 C.F.R. 240.15c2-12* [See Note, below]

Continuing Disclosure after Issuing Bonds

School districts, board members, and certain employees of the district are subject to liability under the antifraud provisions of the federal securities laws contained in Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 of the SEC. The antifraud provisions generally prohibit false or misleading statements made in connection with the offer or sale of a district's bonds (or the omission of material facts from such statements), including the official statement itself and any other statement reasonably expected to reach bond investors (disclosures). *SEC Exchange Act Release No. 33741 (Mar. 9, 1994)*

Liability under Federal Securities Law

The antifraud provisions also apply to a district's continuing disclosure obligations under SEC Rule 15c2-12(b) after a district's bonds are issued. [See Continuing Disclosure after Issuing Bonds, above] *SEC Report on the Municipal Securities Market (July 31, 2012) (the "SEC 2012 Report") at pg. 29*

Note: In preparing an official statement, a district may reasonably rely on the advice of outside professionals who are also subject to the antifraud provisions, but a district is primarily liable for the content of its official statement and other disclosures. *SEC Exchange Act Release No. 36761 (Jan. 24, 1996)*

A district may engage qualified consultants, including qualified disclosure or securities counsel and a financial adviser, to assist with preparing an official statement and other primary disclosures relating to a bond offering. Creation of internal procedures may help to insulate a district against criticism or liability under federal securities laws.

Districts may also engage disclosure counsel and/or other professionals to assist with secondary disclosure, including advice and assistance ensuring that (1) reporting requirements imposed by a CDA are satisfied and (2) information disclosed in periodic and occasional reports is accurate and complete.

Internal procedures may provide for (1) appointment of, and disclosure training for, district officials and employees who will be part of the financing team, (2) a procedure of accountability for review of the disclosures, and (3) ensuring that any procedures established are in fact followed.

[See SEC Report on the Municipal Securities Market (July 31, 2012)]

Table of Contents

Tax Rate Adoption 2
Maintenance Taxes 2
Assessor and Collector 4
Certified Estimate of Values 5
Appraisal Roll 5
Designated Employee/Officer to Calculate Rates 6
Truth-in-Taxation Requirements 7
Tax Rate Adoption Requirements 9
Adoption of Tax Roll 12
Failure to Adopt Tax Rate 12
Taxpayer Injunction 12
Tax Information to County 13
Appraisal District Property Tax Database 13
Internet Posting of Tax Rate and Budget Information 13
Election to Approve Tax Rate 14
Voter-Approval Tax Rate 14
Efficiency Audit 14
Disaster Exception 15
Time for Election 16
Proposition 16
Election Outcome 17

Tax Rate Adoption

Maintenance Taxes

The board may levy, assess, and collect annual ad valorem taxes for the maintenance of the district's schools. Taxes may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election called for that purpose. *Education Code 45.002, .003(a)*

Restriction on Maintenance Tax Levy

A district may not levy the district's maintenance taxes at a rate intended to create a surplus in maintenance tax revenue for the purpose of paying the district's debt service. *Education Code 45.0021(a)* [See Taxpayer Injunction, below]

Note: For information on the consequences of violating this restriction, see Education Code 45.0021(c)-(e). See also Taxpayer Injunction, below.

Exceptions

Education Code 45.0021 does not prohibit a district from:

1. Using a surplus in maintenance tax revenue to pay the district's debt service if the district's interest and sinking fund tax revenue is insufficient to pay the district's debt service due to circumstances beyond the district's control and the use of the surplus maintenance tax revenue to pay the district's debt service is necessary to prevent a default on the district's debt;
2. Paying a portion of the district's maintenance tax revenue into the tax increment fund for a reinvestment zone under Tax Code Chapter 311; or
3. Using money disbursed from the tax increment fund for a reinvestment zone under Tax Code Chapter 311 in accordance with the agreement entered into by the district with the governing body of the municipality or county that designated the zone under Tax Code 311.013(f).

Education Code 45.0021(f)

Maintenance Tax Rate Components

Tier One

A district's tier one maintenance and operations tax rate is the number of cents levied by the district for maintenance and operations that does not exceed the maximum compressed rate, as determined under Education Code 48.2551. *Education Code 45.0032(a)*

Maximum Compressed Rate

"MCR" is the district's maximum compressed rate, which is the tax rate for the current tax year per $100 of valuation of taxable property at which the district must levy a maintenance and operations tax to receive the full amount of the tier one allotment to which the district is entitled under Education Code Chapter 48. The Texas Education Agency (TEA) shall calculate and make available school districts' maximum compressed rates.

Local appraisal districts, school districts, and the comptroller shall provide any information necessary to TEA to implement Education Code 48.2551.

Education Code 48.2551(a)(3), (d), (d-1)

School districts' maximum compressed maintenance and operations tax rates shall be calculated using locally certified property values and adjusted to estimate for exclusions under Government Code 403.302(d).

TEA will open a data collection from 12:01 a.m. on July 18 through 11:59 p.m. on August 1 for districts. Districts must submit the data specified in 19 Administrative Code 61.1000(c). TEA will use any available data to calculate MCR absent data collection submissions from a school district.

19 TAC 61.1000(b), (c), (h)

TEA will calculate and make available preliminary maximum compressed tier one tax rates to each district on or before August 5. If TEA receives an appeal of a preliminary MCR, TEA will issue a final determination to the district no later than August 31. If TEA does not receive an appeal of a preliminary MCR, the preliminary MCR automatically becomes a final MCR 10 calendar days following TEA's approval of the district's preliminary MCR. *19 TAC 61.1000(d)-(f)*

A district may appeal its preliminary MCR through the following process:

1. The TEA division responsible for MCRs must receive a written appeal no later than 10 calendar days after TEA's approval of the district's preliminary MCR. The appeal must include adequate evidence and additional information that supports the position of the district. Appeals received 11 calendar days or more after TEA approves a district's preliminary MCR will not be considered.

2. TEA will only consider appeals that would result in a change of the preliminary MCR.

19 TAC 61.1000(g); Education Code 48.2551(d-2)

Tier Two

A district's enrichment tax rate consists of:

1. Any cents of additional maintenance and operations tax effort, not to exceed eight cents over the maximum tier one tax rate; and

2. Any cents of additional maintenance and operations tax effort that exceeds the sum of the maximum tier one tax rate and the maximum number of cents permitted under item 1 above.

Education Code 45.0032(a), (b)

Districts Subject to Disaster Exception

For a district to which Tax Code 26.042(e) [see Disaster Exception to Election Requirement, below] applies, the amount by which the district's maintenance tax rate exceeds the district's voter-approval tax rate, excluding the district's current debt rate under Tax Code 26.08(n)(3) for the preceding year is not considered in determining a district's tier one maintenance and operations tax rate or the district's enrichment tax rate for the current tax year. *Education Code 45.0032(d)*

Maximum Tax Rate

For any year, the maintenance tax rate per $100 of taxable value adopted by the district may not exceed the rate equal to the sum of $0.17 and the district's maximum compressed rate, as determined under Education Code 48.2551.

A rate that exceeds the maximum rate for the year in which the tax is to be imposed is void. A district with a tax rate that is void under this provision may, subject to requirements imposed by other law, adopt a rate for that year that does not exceed the specified maximum rate for that year.

Education Code 45.003(d), (e)

Districts with 2005 Tax Rate over $1.50

Notwithstanding any other law, a district that levied a maintenance tax for the 2005 tax year at a rate greater than $1.50 per $100 of taxable value in the district as permitted by special law [Art. 2784g Tex. Rev. Civ. Stat.] may not levy a maintenance tax at a rate that exceeds the rate per $100 of taxable value that is equal to the sum of $0.17 and the product of 66.67 percent multiplied by the rate of the maintenance tax levied by the district for the 2005 tax year, minus any amount by which $1.00 exceeds the product of the state compression percentage, as determined under Education Code 48.255, multiplied by $1.00. *Education Code 45.003(f)*

For a district described above, any cents of maintenance and operations tax effort that exceeds the maximum rate described at Maximum Tax Rate are not included in the district's tier one maintenance and operations tax rate or the district's enrichment tax rate and the district is not entitled to the guaranteed yield amount of state funds under Education Code 48.202 for those cents of tax effort. *Education Code 45.0032(c)*

Assessor and Collector

The board may employ a person to assess or collect the district's taxes and may compensate the person as the board considers appropriate. This provision does not prohibit a district from providing

for the assessment or collection of the district's taxes under a method authorized by Tax Code Chapter 6, Subchapter B. *Education Code 45.231*

A district that used a method of selection for the 1994 tax year that was authorized by former Education Code Chapter 23, Subchapter F, may continue to use that method until the district uses another method authorized above. *Education Code 45.232*

The assessor and collector shall assess, collect, or assess and collect taxes, as applicable. *Tax Code 6.23(b)*

Collector's Bond

A district that has its own collector shall require the collector to give bond conditioned on the faithful performance of duties. The bond must be made payable to and be approved by the board in an amount determined by the board. The board may require a new bond at any time, and failure to give new bond within a reasonable time after demand is a ground for removal from office. The board may prescribe additional requirements for the bond.

A district whose taxes are collected by a person other than the district's own collector may require that person to give bond conditioned on the faithful performance of duties. The bond must be payable to, approved by, and paid for by the board in an amount determined by the board. The board may prescribe additional requirements for the bond.

A district shall pay the premium for a required bond from its general fund or as provided by intergovernmental contract.

Tax Code 6.29

Certified Estimate of Values

By April 30, the chief appraiser shall prepare and certify to the district's assessor an estimate of the taxable value of district property. *Tax Code 26.01(e)*

Appraisal Roll

By July 25, the chief appraiser shall prepare and certify to the assessor for the district that part of the appraisal roll that lists the property taxable by the district. The part certified to the assessor is the appraisal roll for the district.

If by July 20 the appraisal review board has not approved the appraisal records as required under Tax Code 41.12, the chief appraiser shall not later than July 25 prepare and certify to the assessor for a school district an estimate of the taxable value of property in the school district.

Tax Code 26.01(a)-(a-1)

By August 1 or as soon thereafter as practicable, the district's assessor shall submit to the board the district's appraisal roll, show-

ing the total appraised, assessed, and taxable values of all property and the total taxable value of new property.

By August 1 or as soon thereafter as practicable, a district's collector shall certify to the board the anticipated collection rate for the current year. If the collector certified an anticipated collection rate in the preceding year and the actual collection rate in that year exceeded the anticipated rate, the collector shall also certify the amount of debt taxes collected in excess of the anticipated amount in the preceding year.

Tax Code 26.04(b)

Designated Employee/Officer to Calculate Rates

After the district's assessor submits the appraisal roll to the board, an officer or employee designated by the board shall calculate the no-new-revenue tax rate and the voter-approval tax rate for the district.

Required Calculation Forms

The designated officer or employee shall use the tax rate calculation forms prescribed by the comptroller under Tax Code 5.07 in calculating the no-new-revenue tax rate and the voter-approval tax rate.

Calculation Forms to County Tax Assessor-Collector

As soon as practicable after the designated officer or employee calculates the no-new-revenue tax rate and the voter-approval tax rate of the district, the designated officer or employee shall submit the tax rate calculation forms used in calculating the rates to the county assessor-collector for each county in which all or part of the territory of the district is located.

If an amount described by Tax Code 26.012(6)(C) is excluded from the current total value of a district that is wholly or partly located in a county that has a population of less than 500,000 and is located on the Gulf of Mexico for a tax year, the designated officer or employee for the district shall include as an addendum to the tax rate calculation forms for that tax year:

1. Documentation that supports the exclusion; and
2. Each statement submitted to the designated officer or employee under Tax Code 41.48(c)(2) for that tax year.

Tax Code 26.04(c), (d-1), (d-3)

[See CE regarding the requirement to attach tax rate calculation forms as an appendix to a district's budget.]

Notice of Certain Appeals; Submissions by Property Owner

Not later than July 1, the designated officer or employee of a district that is wholly or partly located in a county that has a population of less than 500,000 and is located on the Gulf of Mexico shall notify each property owner in the district who owns a property that

had a taxable value in the preceding tax year that was one of the 20 highest in the appraisal district in which the property is located that the owner may have to comply with the requirements of Tax Code 41.48.

A property owner or associated business entity of the owner that intends to file an appeal under Chapter 42 that is part of anticipated substantial litigation, as defined by Tax Code 26.012(1-b), shall submit to the designated officer or employee of a district in which the property included in the litigation is located:

1. The total amount of uncontested taxable value of all property located in the district that may be the subject of an appeal by the property owner or entity and that is part of the litigation; and

2. A written statement providing that the property owner or entity intends to pay the tax due on the amount of the uncontested taxable value.

A property owner or associated business entity of the property owner must submit the information not later than the earlier of August 7 or the 21st day after the date the first hearing regarding a protest of the value of any property included in the anticipated substantial litigation is conducted.

Notwithstanding any other provision, the amount of uncontested taxable value submitted to a designated officer or employee may be used by the designated officer or employee only for the purpose of calculating a tax rate under Tax Code 26.04 and may not be construed as an amount of value of a property that is not in dispute for purposes of a proceeding under Tax Code Chapter 42.

Tax Code 41.48

Truth-in-Taxation Requirements

Note: The *Truth in Taxation* website maintained by the Texas comptroller of public accounts offers detailed guidance on setting local property tax rates for school districts.[1]

Meeting to Adopt Budget

When the budget has been prepared under Education Code 44.002, the board president shall call a meeting of the board for the purpose of adopting a budget for the succeeding tax year. The budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year covered by the budget begins. *Education Code 44.004(a), (g)* [See CE]

Published Notice

The board president shall provide for publication of notice of the budget and proposed tax rate meeting in a daily, weekly, or bi-weekly newspaper published in the district. If no daily, weekly, or

biweekly newspaper is published in the district, the president shall provide for publication of notice in at least one newspaper of general circulation in the county in which the district's central administrative office is located. The notice shall be published not earlier than the 30th day or later than the 10th day before the date of the hearing.

Form and Contents

The notice of public meeting to discuss and adopt the budget and the proposed tax rate may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type and contain the information set out in Education Code 44.004(c) and (c-1).

The notice must include a statement that a district may not increase its maintenance and operations tax rate to create a surplus in maintenance and operations tax revenue for the purpose of paying the district's debt service.

A notice is not valid if it does not substantially conform to the language and format prescribed by the comptroller.

Education Code 44.004(b)-(d)

Budget and Taxpayer Impact Statement

The notice of a meeting at which a district will discuss or adopt the district's budget must include:

1. A physical copy of the proposed budget unless the district has made the proposed budget clearly accessible on the home page of the district's website [see CQA for provisions regarding optional website postings]; and

2. A taxpayer impact statement showing, for the median-valued homestead property, a comparison of the property tax bill in dollars pertaining to the property for the current fiscal year to an estimate of the property tax bill in dollars for the same property for the upcoming fiscal year if the proposed budget is adopted.

Gov't Code 551.043(c)

Debt Service Rate Decrease

If the published interest and sinking fund (debt service) rate decreases after the publication of the required notice, the president is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate. *Education Code 44.004(g-1)*

Districts with July 1 Fiscal Year

Notwithstanding the provisions above, a district with a fiscal year beginning July 1 may use the certified estimate of the taxable value of district property in preparing the required notice if the district does not receive the certified appraisal roll on or before June 7. A

district that uses a certified estimate may adopt a budget at the public meeting designated in the published notice prepared using the estimate, but the district may not adopt a tax rate before the district receives the certified appraisal roll for the district.

After receipt of the certified appraisal roll, a district must publish a revised notice and hold another public meeting before the district may adopt a tax rate that exceeds:

1. The rate proposed in the notice prepared using the estimate; or
2. The district's voter-approval rate determined under Tax Code 26.08 using the certified appraisal roll.

Education Code 44.004(h), (i)

Tax Rate Adoption Requirements

Deadline

The board shall adopt a tax rate for the current tax year and shall notify the assessor of the tax rate adopted. [See Adoption of Tax Roll, below] The board must adopt a tax rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the district, except that the board must adopt a tax rate that exceeds the voter-approval tax rate not later than the 71st day before the next uniform election date that occurs in November of that year. [Note that Election Code 3.005(c) requires that an election to be held on a uniform date be ordered not later than the 78th day before election day; see Time for Election, below.]

The tax rate consists of two components, each of which must be approved separately. The components are:

1. The interest and sinking fund (debt service) rate calculated under Education Code 44.004(c)(5)(A)(ii)(b) ("Rate to Maintain Same Level of Maintenance & Operations Revenue & Pay Debt Service"); and
2. The rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the district for the next year.

Tax Code 26.05(a)

Exceeding the Rate to Maintain Same Level of Maintenance & Operations Revenue & Pay Debt Service

A board may approve an interest and sinking fund rate that exceeds the Rate to Maintain Same Level of Maintenance & Operations Revenue & Pay Debt Service for the district only if:

1. The rate is proposed to be approved by a motion that:
   a. States the calculated rate;
   b. States the proposed rate;

c. States the difference between the proposed rate and the calculated rate; and

d. Describes the purpose for which the excess revenue collected from the proposed rate will be used; and

2. The motion is approved by at least 60 percent of the members of the governing body.

If the board approves a rate in this manner for a tax year, the rate approved is considered to be the current debt rate of the district for that tax year. The officer or employee designated by the district to calculate the voter-approval tax rate of the district shall recalculate that rate to account for the new current debt rate, and that recalculated voter-approval tax rate is considered to be the voter-approval tax rate of the taxing unit for that tax year.

Tax Code 26.05(a-1), (a-2)

Tax Date for Certain Districts

A district that before January 1, 1989, has for at least 10 years followed a practice of adopting its tax rate at a different date than as provided by Tax Code Chapter 26 and of billing for and collecting its taxes at different dates than as provided by Chapters 31 and 33 may continue to follow that practice. This does not affect the dates provided by the Property Tax Code (Tax Code Title 1) for other purposes, including those relating to the appraisal and taxability of property, the attachment of tax liens and personal liability for taxes, and administrative and judicial review under Chapters 41 and 42. *Tax Code 26.135*

Vote

A board may not impose property taxes in any year until it has adopted a tax rate for that year, and the annual tax rate must be set by ordinance, resolution, or order. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget. The vote on the ordinance, resolution, or order setting a tax rate that exceeds the sum of the district's no-new-revenue maintenance and operations tax rate and the district's current debt rate must be a record vote, and at least 60 percent of the members of the board must vote in favor of the ordinance, resolution, or order.

Motion

A motion to adopt an ordinance, resolution, or order setting a tax rate that exceeds the no-new-revenue tax rate must be made in the following form: "I move that the property tax rate be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed tax rate exceeds the no-new-revenue tax rate) percent increase in the tax rate."

Language and Internet Posting

If the ordinance, resolution, or order sets a tax rate that, if applied to the total taxable value, will impose an amount of taxes to fund maintenance and operation expenditures of the district that exceeds the amount of taxes imposed for that purpose in the preceding year the district must:

1. Include in the ordinance, resolution, or order in type larger than the type used in any other portion of the document:

    a. The following statement: “THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR’S TAX RATE”; and

    b. If the tax rate exceeds the no-new-revenue maintenance and operations rate, the following statement: “THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $(Insert amount).”; and

2. Include on the home page of any internet website operated by the district:

    a. The following statement: “(Insert name of unit) ADOPTED A TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR’S TAX RATE”; and

    b. If the tax rate exceeds the no-new-revenue maintenance and operations rate, the following statement: “THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $(Insert amount).”

Tax Code 26.05(b)

Adoption of Tax Roll

On receipt of notice of the tax rate for the current tax year, the assessor for a district shall calculate the tax imposed on each property included on the appraisal roll for the district. The assessor shall enter the amount of tax in the appraisal roll and submit it to the board for approval. The appraisal roll with amounts of tax entered as approved by the board constitutes the district’s tax roll. *Tax Code 26.09(a), (e)*

Failure to Adopt Tax Rate	If the board does not adopt a tax rate before the date required at Deadline above, the tax rate for the district for that tax year is the lower of the no-new-revenue tax rate calculated for that tax year or the tax rate adopted by the district for the preceding tax year. A tax rate established by this provision is treated as an adopted tax rate. Before the fifth day after the establishment of a tax rate by this provision, the board must ratify the applicable tax rate in the manner set out at Tax Rate Adoption Requirements above. *Tax Code 26.05(c)*
Taxpayer Injunction	A person who owns taxable property in a district is entitled to an injunction restraining the collection of taxes by the district if the district has not complied with the requirements of Education Code 44.004(b), (c), (c-1), (c-2), and (d), and, if applicable, (i) [see above at Published Notice, including Form and Contents, and Districts with July 1 Fiscal Year, if applicable] and the failure to comply was not in good faith. An action to enjoin the collection of taxes must be filed before the date a district delivers substantially all of its tax bills. *Education Code 44.004(e)* A person who owns taxable property is entitled to an injunction prohibiting the district in which the property is taxable from adopting a tax rate if the assessor or designated officer or employee of the district, the chief appraiser of the applicable appraisal district, or the district, as applicable, has not complied with the computation, publication, or posting requirements of Tax Code 26.04 or 26.16, 26.17, or 26.18 [see below at Tax Information to County, Appraisal District Property Tax Database, and Internet Posting of Tax Rate and Budget Information]. It is a defense in an action for an injunction under this provision that the failure to comply was in good faith. *Tax Code 26.04(g)* A person who owns taxable property is entitled to an injunction restraining the collection of taxes by a district in which the property is taxable if the district has not complied with the requirements of Tax Code 26.04 and 26.05 [see above at Designated Employee/Officer to Calculate Rates and Tax Rate Adoption Requirements]. It is a defense in an action for an injunction under this provision that the failure to comply was in good faith. An action to enjoin the collection of taxes must be filed not later than the 15th day after the date the district adopts a tax rate. A property owner is not required to pay the taxes imposed by a district on the owner's property while an action filed by the property owner to enjoin the collection of taxes imposed by the district on the owner's property is pending. If the property owner pays the taxes and subsequently prevails in the action, the property owner is entitled to a refund of the taxes paid, together with reasonable attorney's fees and court costs. The prop-

erty owner is not required to apply to the collector for the district to receive the refund. *Tax Code 26.05(e)*

A person who owns taxable property in a district is entitled to an injunction restraining the collection of taxes by the district if the district adopts a maintenance tax in violation of Education Code 45.0021(a) [see above at Restriction on Maintenance Tax Levy]. An action to enjoin the collection of taxes must be filed before the date a district delivers substantially all of its tax bills. *Education Code 45.0021(b)*

Tax Information to County

A district shall provide to the county assessor-collector for each county in which all or part of district territory is located the district's adopted tax rate, maintenance and operations rate, debt rate, no-new-revenue tax rate, no-new-revenue maintenance and operations rate, and voter-approval tax rate for posting on the county's internet website. The district shall provide the information annually following the adoption of a tax rate by the district for the current tax year. *Tax Code 26.16(a)-(b)*

Appraisal District Property Tax Database

The officer or employee designated by the board to calculate the no-new-revenue tax rate and the voter-approval tax rate for the district must electronically incorporate into the database created and maintained by the chief appraiser under Tax Code 26.17 the information required by Tax Code 26.17(e). *Tax Code 26.17(e)*

The assessor for the district shall post prominently on the district's internet website a notice informing each owner of property located in the appraisal district that the estimated amount of taxes to be imposed on the owner's property by each taxing unit in which the property is located may be found in the property tax database maintained by the appraisal district under Tax Code 26.17. The notice must include the elements required by Tax Code 26.04(e-2). *Tax Code 26.04(e-2)*

Internet Posting of Tax Rate and Budget Information

Each district shall maintain an internet website or have access to a generally accessible internet website that may be used for the purposes of this provision. Each district shall post or cause to be posted on the internet website the information required by Tax Code 26.18 in a format prescribed by the comptroller. *Tax Code 26.18* [See CE for required information]

Election to Approve Tax Rate

If the board adopts a tax rate that exceeds the district's voter-approval tax rate, the registered voters of the district at an election held for that purpose must determine whether to approve the adopted tax rate. *Tax Code 26.08(a), (n)*

[For information on conducting elections, see the BBB series.]

Voter-Approval Tax Rate

For purposes of Tax Code 26.08, the voter-approval tax rate of a district is the sum of the following:

1. The rate per $100 of taxable value that is equal to the district's maximum compressed tax rate for the current year;
2. The greater of:
    a. The district's enrichment tax rate for the preceding tax year; or
    b. The rate of $0.05 per $100 of taxable value; and
3. The district's current debt rate.

Tax Code 26.08(n)

Efficiency Audit

“Efficiency audit” means an investigation of the operations of a district to examine fiscal management, efficiency, and utilization of resources.

The board shall conduct an efficiency audit before seeking voter approval to adopt a tax rate for the maintenance and operations of the district at an election held for that purpose and may not hold an election without complying with this requirement.

The board may select the auditor that conducts the district’s annual audit under Education Code 44.008 and may include the efficiency audit as part of the district’s annual audit. [See CFC] A district must pay for the costs associated with an efficiency audit required under this provision. A district shall provide all documents, records, and personnel requested by the auditor as needed to conduct the audit in an efficient manner.

The board must select an auditor to conduct an efficiency audit not later than four months before the date on which the district proposes to hold an election to adopt a maintenance and operations tax rate. An auditor selected by the board must maintain independence from the district and complete the efficiency audit not later than three months after the date the auditor was selected.

Before an election at which a district seeks voter approval to adopt a tax rate, the board must hold an open meeting to discuss the results of the efficiency audit. Not later than 30 days before the date of the election, the results of an efficiency audit must be posted on the district’s internet website.

Education Code 11.184

Legislative Budget Board Guidelines

The Legislative Budget Board (LBB) shall establish guidelines identifying the scope and areas of investigation of an efficiency audit, including identification of resources being used effectively and efficiently and identification of cost savings or reallocations. The auditor selected by the board of a district must follow the guidelines established by the LBB under this provision. *Education Code 11.184(f)*

The LBB Efficiency Audit Guidelines[2] are found on the LBB website.

Disaster Exception

To Efficiency Audit Requirement

The board of a district all or part of which is located in an area declared a disaster area by the governor may hold an election to seek voter approval to adopt a maintenance and operations tax rate during the two-year period following the date of the declaration without conducting an efficiency audit otherwise required above. *Education Code 11.184(b-1)*

To Election Requirement

When increased expenditure of money by a district is necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, epidemic, or pandemic, that has impacted a district and the governor has requested federal disaster assistance for the area in which the district is located, an election is not required under Tax Code 26.08 to approve the tax rate adopted by the board for the year following the year in which the disaster occurs. A tax rate adopted under this provision applies only in the year for which the rate is adopted. *Tax Code 26.042(e)*

A board may not adopt a tax rate under Tax Code 26.042(e) above, for a tax year in which:

1. The board previously adopted a tax rate that exceeded the district's voter-approval tax rate;
2. An election was held under Education Code 26.08 for the purpose of determining whether to approve the district's adopted tax rate [see Election to Approve Tax Rate, above]; and
3. The proposition to approve the district's adopted tax rate was not approved by the voters of the district at the election.

Tax Code 26.042(e-1)

If a district adopts a tax rate under Tax Code 26.042(e) above, the amount by which that rate exceeds the district's voter-approval tax rate for that tax year may not be considered when calculating the district's voter-approval tax rate for the tax year following the year in which the district adopts the rate.

A district that in a tax year elects to adopt a tax rate that exceeds the district's voter-approval tax rate for that tax year without holding an election under Tax Code 26.042(e) above must specify the disaster declaration that provides the basis for authorizing the district to calculate or adopt a tax rate under that provision. A district that in a tax year specifies a disaster declaration as providing the basis for authorizing the district to adopt a tax rate under Tax Code 26.042(e) above may not in a subsequent tax year specify the same disaster declaration as providing the basis for authorizing the district to adopt a tax rate under that provision if in an intervening tax year the taxing unit specifies a different disaster declaration as the basis for authorizing the taxing unit to adopt a tax rate under that provision.

Tax Code 26.042(f)-(g)

Time for Election

The board shall order that the election be held in the district on the next uniform election date prescribed by Election Code 41.001 that occurs after the date of the election order and that allows sufficient time to comply with the requirements of other law. *Tax Code 26.08(b)*

Uniform Election Date

For an election to be held on a uniform election date, the election shall be ordered not later than the 78th day before election day. *Election Code 3.005(c)* [See BBBA for other election procedures and requirements.]

Proposition

At the election, the ballots shall be prepared to permit voting for or against the proposition: "Ratifying the ad valorem tax rate of _____ (insert adopted tax rate) in (name of school district) for the current year, a rate that will result in an increase of _____ (insert percentage increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year) percent in maintenance and operations tax revenue for the district for the current year as compared to the preceding year, which is an additional $_____ (insert dollar amount of increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year).". *Tax Code 26.08(b)*

In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the imposition or increase of a tax shall be printed in mixed-case typewritten letters and:

1. State the amount of or maximum tax rate of the tax or tax increase for which approval is sought; and

2. Include at the top of the proposition in capital typewritten letters of the same font size as the rest of the proposition, the statement “THIS IS A TAX INCREASE”.

Election Code 52.072(e)(1)

Each proposition on the ballot must identify the name of the authority ordering the election on the measure. *Election Code 52.095(c)*

Election Outcome

If a majority of the votes cast in an election favor the proposition, the tax rate for the current year is the rate that was adopted by the board. If the proposition is not approved, a board may not adopt a tax rate for the current year that exceeds the district’s voter-approval tax rate. *Tax Code 26.08(c)-(d)*

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[1] Truth-in-Taxation: Tax Rate Adoption: https://comptroller.texas.gov/taxes/property-tax/truth-in-taxation/index.php
[2] LBB Efficiency Audit Guidelines: https://www.lbb.texas.gov/Documents/Publications/Policy_Report/6365_HB3_Efficiency_Audit_Guidelines.pdf

Table of Contents

Exemptions 2
Homestead 2
Veteran Exemptions 4
Exemption for Subsequent Residence 5
Temporary Exemption for Property Damaged by Disaster 5
Optional Exemptions 5
Goods-in-Transit 6
Payment Options 7
Discounts 7
Split Payments 7
Installment Payments 8
Services in Lieu of Paying Taxes 9
Delinquent Taxes 10
Delinquency Date 10
Delinquent Tax Collection 10
Additional Penalties 10

Note: For more information on property tax exemptions, see the Texas Comptroller's Property Tax Exemptions[1] website.

Exemptions

Homestead

Mandatory

An adult is entitled to exemption from taxation by a district of $140,000 of the appraised value of the adult's residence homestead, as defined by Tax Code 11.13(j), except that only $5,000 of the exemption applies to an entity operating under former Education Code Chapters 17, 18, 25, 26, 27, or 28, as those chapters existed on May 1, 1995, as permitted by Education Code 11.301. *Tax Code 11.13(b)*

Persons 65 or Older or Disabled

In addition to the mandatory exemption above, an adult who is disabled, as defined by Tax Code 11.13(m)(1), or 65 or older is entitled to an exemption of $60,000 of the appraised value of the person's residence homestead. *Tax Code 11.13(c)*

Tax Limitation

A district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years of age or older, or on the residence homestead of an individual who is disabled, above the amount of the tax it imposed in the first tax year in which the individual qualified that residence homestead for an applicable exemption. *Tax Code 11.26(a)*

Improvements

If an individual subject to a tax limitation makes improvements to the individual's residence homestead, other than improvements required to comply with governmental requirements or repairs, the district may increase the tax on the homestead in the first year the value of the homestead is increased on the appraisal roll because of the enhancement of value by the improvements. A limitation then applies to the increased amount of tax until more improvements, if any, are made. *Tax Code 11.26(b)*

Exception

An improvement to property that would otherwise constitute an improvement discussed above is not treated as an improvement if it is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage. For purposes of appraising the property in the tax year in which the structure would have constituted an improvement, the replacement structure is considered to be an improvement only if the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred or the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure. *Tax Code 11.26(o)*

Portability of Tax Limitation

If an individual who receives a tax limitation, including a surviving spouse, discussed below, subsequently qualifies a different residence homestead for the same exemption, a district may not impose ad valorem taxes on the subsequently qualified homestead in a year in an amount that exceeds the amount of taxes calculated in accordance with Tax Code 11.26(g). *Tax Code 11.26(g)*

Surviving Spouse

If an individual who qualifies for the exemption at Persons 65 or Older or Disabled, above, dies, the surviving spouse of the individual is entitled to the limitation applicable to the residence homestead of the individual if the surviving spouse is 55 years of age or older when the individual dies, and the residence homestead of the individual is the residence homestead of the surviving spouse on the date that the individual dies and remains the residence homestead of the surviving spouse. *Tax Code 11.26(i)*

Local Options

All Taxpayers

In addition to other exemptions in Tax Code 11.13, an individual is entitled to an exemption from taxation by a district of a percentage of the appraised value of the individual's residence homestead if the exemption is adopted by the board before July 1 in the manner provided by law for official action by the board. If the percentage set by the district produces an exemption in a tax year of less than $5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of $5,000 of the appraised value. The percentage adopted by the district may not exceed 20 percent. *Tax Code 11.13(n)*

A board that adopted an exemption for the 2022 tax year may not reduce the amount of or repeal the exemption. The requirements in this paragraph expire December 31, 2027. *Tax Code 11.13(n-1)*

Disabled or 65 or Older

An individual who is disabled or 65 or older is entitled to an exemption from taxation by a district of a portion of the appraised value of the individual's residence homestead if the exemption is adopted either by the board or by a favorable vote of a majority of the qualified voters of the district at an election called by the board, and the board shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the district.

Amount

The amount of an exemption adopted as provided at Disabled or 65 or Older is $3,000 of the appraised value of the residence homestead unless a larger amount is specified by the board if the board authorizes the exemption or the petition for the election if the exemption is authorized through an election. Once authorized, an exemption adopted may be repealed or decreased or increased in amount by the board or by the petition and election procedure. In

the case of a decrease, the amount of the exemption may not be reduced to less than $3,000 of the market value.

Tax Code 11.13(d)-(f)

Continuation of Exemption during Construction

If a qualified residential structure for which the owner receives a homestead exemption under Tax Code 11.13 is rendered uninhabitable or unusable by a casualty or by wind or water damage, the owner may continue to receive the exemption for the structure and the land and improvements used in the residential occupancy of the structure while the owner constructs a replacement qualified residential structure on the land in accordance with Tax Code 11.135. *Tax Code 11.135(a), .26(n); 34 TAC 9.416*

Surviving Spouse of First Responder

The surviving spouse of a first responder who is killed or fatally injured in the line of duty is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse is an eligible survivor for purposes of Government Code Chapter 615 as determined by the Employees Retirement System of Texas and has not remarried since the first responder's death. *Tax Code 11.134*

Veteran Exemptions

100 Percent Disabled

A disabled veteran who has been awarded by the U.S. Department of Veterans Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead. *Tax Code 11.131(b)*

Partially Disabled with Donated Residence

A disabled veteran who has a disability rating of less than 100 percent is entitled to an exemption from taxation of a percentage of the appraised value of the disabled veteran's residence homestead equal to the disabled veteran's disability rating if the residence homestead was donated to the disabled veteran by a charitable organization at no cost to the disabled veteran, or at some cost to the disabled veteran in the form of a cash payment, a mortgage, or both in an aggregate amount that is not more than 50 percent of the good faith estimate of the market value of the residence homestead made by the charitable organization as of the date of the donation. *Tax Code 11.132(b)*

Surviving Spouse of Veteran

The surviving spouse of a disabled veteran, as defined by Tax Code 11.22(h)(3), is entitled to the same exemption from taxation of the same property to which the disabled veteran's exemption applied or would have applied if it had been in effect on the date of death if:

1. The surviving spouse has not remarried since the death of the disabled veteran; and

2. The property was the residence homestead of the surviving spouse when the disabled veteran died and remains the residence homestead of the surviving spouse.

Tax Code 11.131(c), .132(c)

Surviving Spouse of Individual Killed in Action

The surviving spouse of a member of the armed services of the United States who is killed or fatally injured in the line of duty is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the member of the armed services. *Tax Code 11.133(b)*

Tex. Const. Art. VIII, Sec. 1-b (Residence Homestead Tax Exemptions and Limitations)

Disabled Veteran

A disabled veteran is entitled to an exemption from taxation of a portion of the assessed value of a property the veteran owns and designates under Tax Code 11.22(f). *Tax Code 11.22*

Exemption for Subsequent Residence

The surviving spouse of a first responder, disabled veteran, or armed services member killed in action who receives an exemption for a residence homestead is entitled to receive an exemption from taxation of a different property that the surviving spouse subsequently qualifies as the surviving spouse's residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption in the last year in which the surviving spouse received that exemption if the surviving spouse has not remarried. *Tax Code 11.131(d), .132(d), .133(c), .134(d)*

Temporary Exemption for Property Damaged by Disaster

A person is entitled to an exemption from taxation by a district of a portion of the appraised value of qualified property, as defined by Tax Code 11.35(a), that the person owns in an amount determined by the chief appraiser under Tax Code 11.35(h). *Tax Code 11.35(b)*

A person who qualifies for an exemption under this provision must apply for the exemption not later than the 105th day after the date the governor declares the area in which the person's qualified property is located to be a disaster area. *Tax Code 11.43(s)*

"Damage" means physical damage. *Tax Code 11.35(a)(1)*

Optional Exemptions

Among others, a board may grant additional tax exemptions in accordance with applicable law for:

1. Residential property owned by the United States or an agency of the United States and used to provide transitional housing for the indigent under a program operated or directed by the

U.S. Department of Housing and Urban Development. *Tax Code 11.111*

2. Land and housing units on the land owned by a community land trust. *Tax Code 11.1827*

3. Certain historic structures or archeological sites and the land necessary to access and use the structure or archeological site. *Tax Code 11.24*

4. Property on which approved water conservation initiatives, desalination projects, or brush control initiatives have been implemented. *Tax Code 11.32*

If a district adopts, amends, or repeals an exemption that the district by law has the option to adopt or not, the district shall notify the appraisal office of its action and of the terms of the exemption within 30 days after the date of its action. *Tax Code 6.08*

Goods-in-Transit *Exemption*

A person is entitled to an exemption from taxation of the appraised value of that portion of the person's property that consists of goods-in-transit, as defined in Tax Code 11.253(a)(2). *Tax Code 11.253(b)*

[For information on the board's option in a district located in a disaster area to extend the date by which goods-in-transit must be transported, see Tax Code 11.253(l).]

Option to Tax

A board, by official action, may provide for the taxation of goods-in-transit exempt under Tax Code 11.253(b) and not exempt under other law. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the board proposes to tax goods-in-transit. Before acting to tax the exempt property, a board must conduct a public hearing as required by Texas Constitution Article VIII, Section 1-n(d). If the board provides for the taxation of the goods-in-transit as provided by this provision, the exemption stated above does not apply to that district. The goods-in-transit remain subject to taxation by the district until the board, by official action, rescinds or repeals its previous action to tax goods-in-transit, or otherwise determines that the exemption will apply to that district.

Notwithstanding official action that was taken before October 1, 2011, to tax goods-in-transit, a district may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the board takes official action on or after October 1, 2011, to provide for the taxation of the goods-in-transit.

Exception

If a board, before October 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the

goods-in-transit for the payment of a debt of the district, the district tax officials may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created.

Tax Code 11.253(j)-(j-2)

Payment Options

The board may adopt, by official action, one or both of the discount options below. *Tax Code 31.05(a)*

Discounts

Option 1

A district may adopt the following discounts to apply regardless of the date on which the district mails its tax bills:

1. Three percent if the tax is paid in October or earlier.
2. Two percent if the tax is paid in November.
3. One percent if the tax is paid in December.

Tax Code 31.05(b)

This discount does not apply to taxes that are calculated too late for it to be available. *Tax Code 31.04(c)*

Option 2

A district may adopt the following discounts to apply when the district mails its tax bills after September 30:

1. Three percent if the tax is paid before or during the next full calendar month following the date on which the tax bills were mailed.
2. Two percent if the tax is paid during the second full calendar month following the date on which the tax bills were mailed.
3. One percent if the tax is paid during the third full calendar month following the date on which the tax bills were mailed.

Tax Code 31.05(c)

Both Options

If a board adopts both discounts, the discounts described at Option 1 apply unless the tax bills for the district are mailed after September 30, in which case only the discounts described at Option 2 apply. *Tax Code 31.05(a)*

Rescission

The board may rescind a discount lawfully adopted by the board. The rescission of a discount takes effect in the tax year following the year in which the discount is rescinded. *Tax Code 31.05(d)*

Split Payments

The board of a district that collects its own taxes may provide, by official action, that a person who pays one-half of the district's taxes before December 1 may pay the remaining one-half of the

taxes without penalty or interest at any time before July 1 of the following year.

If a district that has adopted the split-payment mails its tax bills after November 30, the first one-half of the district's taxes must be paid before the first day of the next month following the first full calendar month following the date the tax bills are mailed.

If a board contracts with the appraisal district for collection of taxes, the split-payment option does not apply to taxes collected by the appraisal district unless approved by resolution adopted by a majority of the governing bodies of the taxing units whose taxes the appraisal district collects and filed with the secretary of the appraisal district board of directors. The split-payment option may be revoked in the same manner as provided for adoption.

Tax Code 31.03(a), (a-1), (c)

In Certain Counties

The board of a district located in a county having a population of not less than 315,000 and not more than 351,000 that borders a county having a population of 3.3 million or more and the Gulf of Mexico that has its taxes collected by another taxing unit that has adopted the split-payment option may provide, by official action, that the split-payment option does not apply to the district's taxes collected by the other taxing unit. *Tax Code 31.03(d)*

Installment Payments

Certain Homesteads

An individual who is disabled or at least 65 years of age and qualified for a homestead exemption under Tax Code 11.13(c), or an individual who is a disabled veteran or the unmarried surviving spouse of a disabled veteran and qualified for an exemption under Tax Code 11.132 or 11.22, may pay district taxes imposed on the person's residence homestead property in four equal installments without penalty or interest if paid by the applicable dates set out in Tax Code 31.031. *Tax Code 31.031*

Disaster or Emergency Area

A person may pay district taxes imposed on certain property the person owns in four equal installments without penalty or interest if paid in accordance with Tax Code 31.032.

Property Damaged — Automatic

This provision applies to real and tangible personal property described in Tax Code 31.032(a) and taxes that are imposed on the property by a district before the first anniversary of the disaster or emergency.

Tax Code 31.032

Property Not Damaged — Board Option

The board may authorize a person to pay district taxes imposed on certain property that the person owns in installments. If the board adopts the installment-payment option under this provision, Tax Code 31.032(b), (b-1), (c), and (d) apply to the payment by a per-

son of district taxes imposed on property that the person owns in the same manner as those subsections apply to the payment of taxes imposed on property to which Tax Code 31.032 applies.

This provision applies to real and tangible personal property described in Tax Code 31.033(b) and taxes that are imposed on the property by a district before the first anniversary of the disaster or emergency.

Tax Code 31.033; 34 TAC 9.3061(b), (c)

Definitions

"Disaster" has the meaning assigned by Government Code 418.004.

"Emergency" means a state of emergency proclaimed by the governor under Government Code 433.001.

Tax Code 31.032(g), .033(a); 34 TAC 9.3061(a)

Services in Lieu of Paying Taxes

The board by resolution may permit certain individuals or business entities to perform certain services for the district in lieu of paying the district property taxes. While performing services for a district, the individual is not an employee of the district and is not entitled to any benefit, including workers' compensation coverage, that the district provides to its employees. *Tax Code 31.035, .036, .037*

Persons 65 and Over

Subject to the requirements of Tax Code 31.035, the board by order or resolution may permit an individual who is at least 65 years of age to perform service for the district in lieu of paying taxes imposed by a district on property owned by the individual and occupied as the individual's residence homestead. Property owners performing services for a district under this provision may only supplement or complement the regular personnel of the district. A district may not reduce the number of persons the district employs or reduce the number of hours to be worked by employees of the district because the district permits property owners to perform services for the district under this provision. *Tax Code 31.035(a), (g)*

Teaching Services

An individual is qualified to perform teaching services for a district under the provisions below only if the individual holds a baccalaureate or more advanced degree in a field related to each course to be taught and:

1. Is certified as a classroom teacher under Education Code Chapter 21, Subchapter B; or
2. Obtains a school district teaching permit under Education Code 21.055.

Tax Code 31.036(h), .037(i)

By Individual

Subject to the requirements of Tax Code 31.036, the board by resolution may permit qualified individuals to perform teaching services for the district at a junior high school or high school of the district in lieu of paying taxes imposed by the district on property owned and occupied by the individual as a residence homestead. *Tax Code 31.036*

By Employee of Business Entity

Subject to the requirements of Tax Code 31.037, a board by resolution may authorize a corporation or other business entity to permit a qualified individual employed by the business entity to perform teaching services in a high school or a junior high school for the district in lieu of paying taxes imposed by the district on property owned by the business entity. *Tax Code 31.037*

Delinquent Taxes

Delinquency Date

Except as provided by Tax Code 31.02(b) (payment by certain eligible persons on active duty in the armed forces), 31.03 (split payments), and 31.04 (postponement of delinquency date based on mailing date of tax bills), taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed. *Tax Code 31.02*

Note: Delinquent taxes incur penalties and accrue interest in accordance with Tax Code 33.01, subject to any waiver by the board pursuant to Tax Code 33.011.

Delinquent Tax Collection

A board may contract with any competent attorney to represent the district to enforce the collection of delinquent taxes. The attorney's compensation is set in the contract, but the total amount of compensation provided may not exceed 20 percent of the amount of delinquent tax, penalty, and interest collected. *Tax Code 6.30(c)* [See CH(LEGAL) regarding contingent fee contracts for legal services and Government Code 2254.102(e) for additional requirements.]

Additional Penalties

The board may provide, by official action, that taxes that become delinquent at a certain time incur an additional penalty to defray costs of collection if the board has contracted with an attorney as provided above. *Tax Code 33.07, .08*

[1] Texas Comptroller Property Tax Exemptions website: https://comptroller.texas.gov/taxes/property-tax/exemptions/

Table of Contents

Tax Increment Financing Act 2
Board of Directors 2
Tax Increments 2
Reinvestment Zone 4
Texas Jobs, Energy, Technology, and Innovation Act 5
Definitions 5
Required Jobs and Investment 6
Taxable Value of Eligible Property 7
Application 7
Economic Benefit Statement 8
Comptroller Action on Application 8
Governor Action on Application 8
School District Action on Application 9
Agreement 9
Incentive Period 10
Conflict of Interest 10
Certain Benefits Prohibited 10
Confidentiality of Certain Business Information 11
Texas Economic Development Act 11
Disclosure of Appraised Value Limitation Information 11
Property Redevelopment and Tax Abatement Act 11

Tax Increment Financing Act

Except as provided at Large Municipality below, each district that levies taxes on real property in a reinvestment zone designated by a county or municipality in accordance with the Tax Increment Financing Act, Tax Code Chapter 311, may appoint one member of the reinvestment zone board of directors if the district has approved the payment of all or part of the tax increment produced by the district into the tax increment fund for the zone. A district may waive its right to appoint a director. *Tax Code 311.009(a), (b)*

Board of Directors

Large Municipality

In a reinvestment zone designated by a municipality which is wholly or partially located in a county with a population of less than 2.1 million in which the principal municipality has a population of 1.1 million or more, each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint a number of members to the board in proportion to the taxing unit's pro rata share of the total anticipated tax increment to be deposited into the tax increment fund during the term of the zone. *Tax Code 311.0091(a)-(c)*

Tax Increments

Amount

The amount of a district's tax increment for a year is the amount of property taxes levied and assessed by the district for that year on the captured appraised value of real property taxable by the district and located in a reinvestment zone or the amount of property taxes levied and collected by the district for that year on the captured appraised value of real property taxable by the district and located in a reinvestment zone. The board of the district shall determine which of the methods is used to calculate the amount of the district's tax increment.

"Captured Appraised Value"

The captured appraised value of real property taxable by a district for a year is the total taxable value of all real property taxable by the district and located in a reinvestment zone for that year less the tax increment base of the district.

"Tax Increment Base"

The tax increment base of a district is the total taxable value of all real property taxable by the district and located in a reinvestment zone for the year in which the zone was designated under Tax Code Chapter 311.

Tax Code 311.012

Collection and Deposit

Each district that taxes real property located in a reinvestment zone shall provide for the collection of its taxes in the zone as for any other property taxed by the district. Each district shall pay into the tax increment fund for the zone an amount equal to the tax increment produced by the district, less the sum of:

1. Property taxes produced from the tax increments that are, by contract executed before the designation of the area as a

reinvestment zone, required to be paid by the district to another political subdivision; and

2. A portion, not to exceed 15 percent, of the tax increment produced by the district as provided by the reinvestment zone financing plan or a larger portion as provided at Agreement Required below.

Tax Code 311.013(a)-(b)

Notwithstanding any termination of the reinvestment zone and unless otherwise specified by an agreement between the district and the municipality or county that created the zone, a district shall make the required payment not later than the 90th day after the later of the delinquency date for district property taxes or the date the municipality or county that created the zone submits to the district an invoice specifying the tax increment produced by the district and the amount the district is required to pay into the tax increment fund for the zone. A district is not required to pay into a tax increment fund the applicable portion of a tax increment attributable to delinquent taxes until those taxes are collected. *Tax Code 311.013(c), (i)*

A district whose taxable value is reduced under Government Code 403.302(d)(4) (determination of district property values by the comptroller) shall pay into the tax increment fund, in addition to the amount otherwise required to be paid, an amount equal to the amount by which the amount of taxes the district would have been required to pay into the fund in the current year if the district levied taxes at the rate the district levied in 2005 exceeds the amount the district is otherwise required to pay into the fund in the year of the reduction. This additional amount may not exceed the amount the district receives in state aid for the current tax year under Education Code 48.253 (additional state aid for tax increment financing payments). The district shall pay the additional amount after the district receives the state aid to which the district is entitled for the current tax year under Education Code 48.253. *Tax Code 311.013(n)*

Agreement Required

A district is not required to pay into the tax increment fund any of its tax increment produced from property located in a reinvestment zone designated under Tax Code 311.005(a) or in an area added to a reinvestment zone under Tax Code 311.007 unless the district enters into an agreement to do so with the governing body of the municipality or county that designated the zone. *Tax Code 311.013(f)*

A district that participates in a zone is not required to increase the percentage or amount of the tax increment to be contributed by the

district because of an amendment to the project plan or reinvestment zone financing plan for the zone unless the board by official action approves the amendment. *Tax Code 311.011(g)*

A district is not required to pay into the tax increment fund any of its tax increment produced from property located in an area added to the reinvestment zone under Tax Code 311.007(a) or (b) unless the board enters into an agreement to do so with the governing body of the municipality or county that created the zone. *Tax Code 311.013(k)*

If the governing body of the municipality or county that designated a reinvestment zone extends the term of all or a portion of the zone, a district is not required to participate in the zone or portion of the zone for the extended term unless the district enters into a written agreement to do so. *Tax Code 311.007(c)*

Notwithstanding the designation of a later termination date under Tax Code 311.017(a), a district that taxes real property located in the reinvestment zone is not required to pay any of its tax increment into the tax increment fund for the zone after the termination date designated in the ordinance or order creating the zone unless the board enters into an agreement to do so with the governing body of the municipality or county that created the zone. *Tax Code 311.017(a-1)*

Reinvestment Zone

Notwithstanding any other provision of Tax Code Chapter 312 to the contrary, the board, in the manner required for official action and for purposes of former Tax Code Chapter 313, Subchapter B or C [see Texas Economic Development Act below] or Government Code Chapter 403, Subchapter T [see Texas Jobs, Energy, Technology, and Innovation Act below], may designate an area entirely within the territory of the district as a reinvestment zone if the board finds that, as a result of the designation and the granting of a limitation on appraised value, for property located in the reinvestment zone, the designation is reasonably likely to:

1. Contribute to the expansion of primary employment in the reinvestment zone; or

2. Attract major investment in the reinvestment zone that would:

    a. Be a benefit to property in the reinvestment zone and to the district; and

    b. Contribute to the economic development of the region of this state in which the district is located.

The board may seek the recommendation of the commissioners court of each county and the governing body of each municipality

that has territory in the district before designating an area as a reinvestment zone.

Tax Code 312.0025

Texas Jobs, Energy, Technology, and Innovation Act

Note: The Texas Jobs, Energy, Technology, and Innovation Act, Government Code Chapter 403, Subchapter T, took effect on January 1, 2024.

The Act will expire on December 31, 2033. *Gov't Code 403.603*

The comptroller's rules enacted to implement the Act are found at 34 Administrative Code 9.5000-9.5012.

Definitions

Agreement "Agreement" means an agreement to limit the taxable value for maintenance and operations ad valorem tax purposes of the district of eligible property used as part of an eligible project under Government Code 403.612.

Applicant "Applicant" means a person that applies for, or enters into an agreement, including the person's assignees or successors-in-interest.

Eligible project "Eligible project" means a project to construct or expand critical infrastructure or a new or existing:

1. Manufacturing facility;
2. Facility related to the provision of utility services, including an electric generation facility that is considered to be dispatchable;
3. Facility related to the development of natural resources; or
4. Facility engaged in the research, development, or manufacture of high-tech equipment or technology.

The term does not include a project to construct or expand a new or existing nondispatchable electric generation facility or electric energy storage facility.

Eligible property "Eligible property" means property that is used as part of an eligible project that is wholly owned by an applicant or leased by an applicant under a capitalized lease and consists of:

1. A new building or expansion of an existing building, constructed after the date the agreement is entered into and located in an area designated as a reinvestment zone or as an enterprise zone at the time the agreement is entered into; or

2. Tangible personal property, other than inventory, first located in an area designated as a reinvestment zone or as an enterprise zone after the date the agreement pertaining to the project is entered into.

Incentive period "Incentive period" for an eligible project means the period prescribed by the agreement pertaining to the project during which the eligible property used as part of the project is subject to a limitation on taxable value.

Investment "Investment" means the costs incurred by an applicant to acquire or construct eligible property composing an eligible project, other than the cost of land or inventory.

Required job "Required job" means a job that an applicant commits to create or demonstrate in connection with an eligible project as prescribed by Government Code 403.604.

Gov't Code 403.602(2), (3), (8), (9), (11), (13), (16)

Required Jobs and Investment

To be eligible to enter into an agreement, an applicant for a limitation on taxable value of eligible property to be used for a proposed eligible project must agree to create the number of jobs and make the minimum investment applicable to the population of the county where the project is to be located as set out in Government Code 403.604(b).

If an eligible project is located in more than one county, the jobs and investment requirement applicable to the project is determined using the jobs and investment requirement applicable to the county with the smallest population in which any part of the project is located.

Each required job created in connection with an eligible project must be a new full-time job in this state and may not be transferred by the applicant from an existing facility or location in this state or otherwise created to replace an existing job, unless the applicant fills the vacancy caused by the transfer.

An applicant may demonstrate that the applicant has met the applicable minimum investment requirement by any reasonable means. The applicant is considered to have met the applicable minimum investment requirement if the most recent appraisal roll for the county used to determine the minimum investment requirement indicates that the appraised value of the eligible property composing the project as of January 1 of the second tax year of the incentive period prescribed by the agreement is equal to or greater than the minimum investment requirement applicable to the project.

Gov't Code 403.604(b)-(e)

Taxable Value of Eligible Property

The taxable value for school district maintenance and operations ad valorem tax purposes of eligible property subject to an agreement for each tax year of the incentive period prescribed by the agreement is equal to:

1. 50 percent of the market value of the property for that tax year; or
2. If the property is located in a qualified opportunity zone, 25 percent of the market value of the property for that tax year.

The taxable value of eligible property for school district maintenance and operations ad valorem tax purposes is zero for each tax year beginning with the tax year following the year in which the agreement pertaining to the property is entered into and ending December 31 of the tax year that includes the construction completion date for the applicable eligible project.

Gov't Code 403.605

Application

A person who proposes to construct an eligible project in a school district for which the person seeks a limitation on the taxable value for maintenance and operations ad valorem tax purposes of the district of the eligible property used as part of the proposed project must submit an application to the comptroller using the form prescribed by the comptroller.

An applicant must include with an application the following:

1. An application fee payable to the comptroller in an amount determined by the comptroller not to exceed an amount sufficient to cover the costs associated with the comptroller's evaluation of the application;
2. An application fee payable to the school district in an amount determined by the comptroller not to exceed $30,000 to cover the costs associated with the district's evaluation of the application, including the cost of processing the application, retaining professional services, and, if applicable, creating a reinvestment zone or enterprise zone;
3. A map showing the site of the proposed project;
4. The economic benefit statement prepared under Government Code 403.608 [see Economic Benefit Statement below] in connection with the proposed project; and
5. A sworn affidavit stating that the applicant is not ineligible under Government Code 403.606 to submit the application.

The comptroller shall notify an applicant and the applicable school district when the applicant's application is administratively complete.

Gov't Code 403.607(a), (b), (d), (f)

Economic Benefit Statement

An applicant shall submit an economic benefit statement with the applicant's application. The economic benefit statement must include the information required by Government Code 403.608(b). *Gov't Code 403.608(a)*

Comptroller Action on Application

The comptroller shall determine whether to recommend or not recommend for approval an application submitted to the comptroller. The comptroller shall recommend an application for approval if the comptroller makes the findings prescribed by Government Code 403.609(b). The comptroller may not recommend an application for approval if the comptroller is unable to make the required findings.

Not later than the 60th day after the date the comptroller determines that an application is complete, the comptroller shall take action regarding the application and provide written notice of the action to the governor, the school district in which the project is proposed to be located, and the applicant.

The comptroller shall send to the governor and the applicable school district a copy of the application and each document and item of information the comptroller relied on to recommend the application.

Gov't Code 403.609(a), (d), (e)

Governor Action on Application

The governor shall, not later than the 30th day after the date the governor receives an application sent to the governor by the comptroller, consider the application and by official action determine whether the governor is agreeable to entering into the agreement that is the subject of the application.

The governor shall provide written notice of the governor's determination to the comptroller, the applicable school district, and the applicant not later than the seventh day after the date the governor makes the determination.

Gov't Code 403.610

School District Action on Application

The board shall, not later than the 30th day after the date the district receives an application sent to the district by the comptroller, consider the application and by official action determine whether the district is agreeable to entering into the agreement that is the subject of the application.

Public Hearing

The board shall hold a public hearing on the application during the 30-day period.

The board must provide notice of the public hearing in the manner required by Government Code Chapter 551 (Open Meetings Act), except that the district must provide the notice not later than the 15th day before the date of the hearing.

The notice must contain:

1. The name of the applicant;
2. The name and location of the existing or proposed reinvestment zone or enterprise zone in which the eligible project that is the subject of the application is proposed to be located;
3. A general description of the proposed eligible project; and
4. The projected investment the applicant will make in the project.

The board shall provide written notice of the district's determination to the comptroller, the governor, and the applicant.

Gov't Code 403.611

Agreement

The governor, the board, and an applicant may enter into an agreement to limit the taxable value for maintenance and operations ad valorem tax purposes of the district of the eligible property used as part of an eligible project that is the subject of an application for which both the governor and the board have made a favorable determination.

Required Terms, Payment to District Prohibited

An agreement entered into between the governor, a school district, and an applicant pertaining to an eligible project shall contain the specifications and requirements of Government Code 403.612(b), including a provision that states that the applicant is prohibited from making a payment to the district related to the agreement.

Termination

The agreement must provide that:

1. The governor or the district is authorized to terminate the agreement if the applicant fails to comply with an applicable jobs or wage requirement of the agreement;
2. The governor or the district may not terminate the agreement until the party provides written notice to the applicant of the proposed termination;
3. The governor or the district must provide the applicant a 180-day period to cure and dispute the alleged failure, including through judicial action; and

4. In the event the agreement is terminated, the state shall recover from the applicant a penalty in an amount equal to all lost ad valorem tax revenue from the project and interest on that amount calculated as provided by Tax Code 111.060.

An agreement terminated is void, and all remaining obligations and benefits under the agreement and the Texas Jobs, Energy, Technology, and Innovation Act terminate on the date the agreement is terminated.

Modifications — The parties to an agreement may modify the terms of the agreement that do not materially modify the jobs or investment requirements prescribed by the agreement.

Submission to Comptroller — An agreement must be submitted to the comptroller not later than the seventh day after the date the agreement is entered into. A copy of the economic benefit statement applicable to the project that is the subject of the agreement must be attached to the agreement.

Gov't Code 403.612

Incentive Period — An incentive period pertaining to an eligible project is a period of 10 consecutive tax years specified in the agreement pertaining to the project. *Gov't Code 403.613*

Conflict of Interest — A person may not, directly or indirectly, represent, advise, or provide a service to both an applicant and a school district in connection with the same application submitted or agreement entered into. *Gov't Code 403.619*

Certain Benefits Prohibited — An employee or representative of a district, a member of the board, or any other person may not intentionally or knowingly solicit, accept, agree to accept, or require any payment of money or transfer of property or other thing of value, directly or indirectly, to the district, an employee or representative of the district, a member of the board, or any other person in recognition of, anticipation of, or consideration for approval of an agreement unless authorized by Government Code Chapter 403, Subchapter T.

An applicant, an employee or representative of the applicant, or any other person may not intentionally or knowingly offer, confer, agree to confer, or make a payment of money or transfer of property or other thing of value, directly or indirectly, to the governor or the school district, an employee or representative of the governor or the district, a member of the board, or any other person in recognition of, anticipation of, or consideration for approval of an agreement unless authorized by the law.

Gov't Code 403.620

Confidentiality of Certain Business Information	Information provided to the comptroller, the governor, or a district by an applicant that is a trade secret, as defined by Civil Practice and Remedies Code 134A.002, is confidential and not subject to disclosure under Government Code Chapter 552 (Public Information Act). *Gov't Code 403.621*
Texas Economic Development Act	A limitation on appraised value approved under the Texas Economic Development Act before its expiration continues in effect according to the law as it existed immediately before its expiration, and the law is continued in effect for purposes of the limitation on appraised value. *Tax Code 313.171*
Disclosure of Appraised Value Limitation Information	If a district maintains a generally accessible internet website, the district shall maintain a link on its internet website to the area of the comptroller's internet website where information on each of the district's agreements to limit appraised value is maintained. *Former Tax Code 313.0265(c), as continued in effect by Tax Code 313.171*
Property Redevelopment and Tax Abatement Act	On or after September 1, 2001, a school district may not enter into a tax abatement agreement under Tax Code Chapter 312. *Tax Code 312.002(f)*

Authorized Expenditures

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)*

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. Nor shall a district pay or authorize the payment of any claim against the district under any agreement or contract made without authority of law. *Tex. Const. Art. III, Sec. 53; Harlingen Indep. Sch. Dist. v. C.H. Page & Bro., 48 S.W.2d 983 (Tex. Comm'n App. 1932)*

The public school funds may not be spent except as provided by Education Code 45.105. The state and county available funds may be used only for the payment of teachers' and superintendents' salaries and interest on money borrowed on short time to pay those salaries that become due before school funds for the current year become available. Loans for the purpose of payment of teachers may not be paid out of funds other than those for the current year.

Local school funds from district taxes, tuition fees of students not entitled to a free education, other local sources, and state funds not designated for a specific purpose may be used for the purposes listed above for state and county available funds and for purchasing appliances and supplies; paying insurance premiums; paying janitors and other employees; buying school sites; buying, building, repairing, and renting school buildings, including acquiring school buildings and sites by leasing through annual payments with an ultimate option to purchase [see CHG]; providing advising support as described by Education Code 48.0035(1) and educating students as described by Education Code 48.0035(2) [see EHDD]; and, except as provided below, for other purposes necessary in the conduct of the public schools as determined by the board.

Exception

Funds described above may not be used to initiate or maintain any action or proceeding against the state or an agency or officer of the state arising out of a decision, order, or determination that is final and unappealable under a provision of the Education Code, except that funds may be used for an action or proceeding that is specifically authorized by a provision of the Education Code or a rule adopted under the Education Code and that results in a final and unappealable decision, order, or determination.

Education Code 45.105(a)–(c), (c-1)

Fiscal Year

The fiscal year of a district begins on July 1 or September 1 of each year, as determined by the board. *Education Code 44.0011*

Budget Preparation

On or before the date set by the State Board of Education (SBOE), a superintendent shall prepare, or cause to be prepared, a proposed budget covering all estimated revenue and proposed expenditures of a district for the following fiscal year. The budget must be prepared according to generally accepted accounting principles, rules adopted by the SBOE, and adopted policies of the board of trustees. *Education Code 44.002; 19 TAC 109.1(a), .41, .5001*

Funds for Accelerated Instruction

A district that is required to provide accelerated instruction under Education Code 29.081(b-1) [see EHBCA] shall separately budget sufficient funds, including funds under Education Code 48.104, for that purpose. *Education Code 29.081(b-2)*

Itemization of Certain Expenditures

The proposed budget of a district must include, in a manner allowing for as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the preceding year, a line item indicating expenditures for:

1. Notices required by law to be published in a newspaper by the district or a representative of the district; and
2. Directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action, as those terms are defined in Government Code 305.002.

Local Gov't Code 140.0045

Public Meeting on Budget and Proposed Tax Rate

When the budget has been prepared, the board president shall call a board meeting for the purpose of adopting a budget for the succeeding fiscal year. Any taxpayer of a district may be present and participate in the meeting. *Education Code 44.004(a), (f)* [See CCG for provisions governing tax rate adoption.]

The meeting must comply with the notice requirements of the Open Meetings Act. *Gov't Code 551.041, .043* [See BE]

Published Notice

The board president shall provide for publication of notice of the budget and proposed tax rate meeting in accordance with Education Code 44.004. [For specific requirements regarding the form, contents, and publication of the notice, see CCG(LEGAL).]

Publication of Proposed Budget Summary

Concurrently with the publication of notice of the budget under Education Code 44.004, a district shall post a summary of the proposed budget on the school district's internet website or, if the district has no internet website, in the district's central administrative office.

The budget summary must include a comparison to the previous year's actual spending and information relating to per student and aggregate spending on:

1. Instruction;
2. Instructional support;
3. Central administration;
4. District operations;
5. Debt service; and
6. Any other category designated by the commissioner.

Education Code 44.0041

Budget Adoption

The board, at the meeting called for that purpose, shall adopt a budget to cover all expenditures for the succeeding fiscal year. The budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year covered by the budget begins. *Education Code 44.004(f)–(g)*

Appendix for Tax Rate Calculation Forms

The board shall include as an appendix to the district's budget for a fiscal year the tax rate calculation forms used by the designated officer or employee of the district to calculate the no-new-revenue tax rate and the voter-approval tax rate of the district for the tax year in which the fiscal year begins. *Tax Code 26.04(e-5)* [See CCG]

Districts with July 1 Fiscal Year

A district with a fiscal year beginning July 1 may use the certified estimate of the taxable value of district property [see CCG] in preparing the required notice if the district does not receive the certified appraisal roll on or before June 7. A district that uses a certified estimate may adopt a budget at the public meeting designated in the published notice prepared using the estimate, but the district may not adopt a tax rate before the district receives the certified appraisal roll for the district. *Education Code 44.004(h)–(i)*

Budget Adoption After Tax Rate Adoption

Notwithstanding Education Code 44.004(g), (h), and (i), above, a district may adopt a budget after the district adopts a tax rate for the tax year in which the fiscal year covered by the budget begins if the district elects to adopt a tax rate before receiving the certified appraisal roll for the district. If a district elects to adopt a tax rate before adopting a budget, the district must publish notice and hold a meeting for the purpose of discussing the proposed tax rate. Following adoption of the tax rate [see CCG], the district must publish notice and hold another public meeting before the district may adopt a budget. The comptroller shall prescribe the language and format to be used in the notices. The district may use the certified

estimate of taxable value in preparing a notice under this provision. *Education Code 44.004(j)*

Publication of Adopted Budget

On final approval of the budget by the board, the district shall post on the district's internet website a copy of the budget adopted by the board. The district's website must prominently display the electronic link to the adopted budget. A district shall maintain the adopted budget on the district's website until the third anniversary of the date the budget was adopted. *Education Code 44.0051*

On or before a date set by the SBOE, the budget must be filed with the Texas Education Agency according to rules established by the SBOE. *Education Code 44.005*

Internet Posting of Tax Rate and Budget Information

Each district shall maintain an internet website or have access to a generally accessible internet website that may be used for the purposes of these provisions. Each district shall post or cause to be posted on the internet website the following information in a format prescribed by the comptroller:

1. The name of each member of the board;
2. The mailing address, email address, and telephone number of the district;
3. The official contact information for each member of the board, if that information is different from the information described by item 2;
4. The district's budget for the preceding two years;
5. The district's proposed or adopted budget for the current year;
6. The change in the amount of the district's budget from the preceding year to the current year, by dollar amount and percentage;
7. The tax rate for maintenance and operations adopted by the district for the preceding two years;
8. The interest and sinking fund tax rate adopted by the district for the preceding two years;
9. The tax rate for maintenance and operations proposed by the district for the current year;
10. The interest and sinking fund tax rate proposed by the district for the current year; and
11. The most recent financial audit of the district.

Tax Code 26.18

Effect of Adopted Budget and Amendment

Public funds of the district may not be spent in any manner other than as provided for in the budget adopted by the board, but the board may amend a budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses. Any amendment or supplementary budget must be prepared and filed in accordance with SBOE rules. *Education Code 44.006*

Spending Violation/Offense

A trustee who votes to approve any expenditure of school funds in violation of a provision of the Education Code, for a purpose for which those funds may not be spent, or in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget commits an offense. *Education Code 44.052(c)*

Certain Donations

A district may donate funds or other property or service to the adjutant general's department, the Texas National Guard, or the Texas State Guard. *Gov't Code 437.111(b), .252, .304(a)*

Commitment of Current Revenue

A contract for the acquisition, including lease, of real or personal property is a commitment of a district's current revenue only, provided the contract contains either or both of the following provisions:

1. Retains to a board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.

2. Is conditioned on a best-efforts attempt by the board to obtain and appropriate funds for payment of the contract.

Local Gov't Code 271.903

Prohibited Uses of Resources

Improvements to Real Property

Except as provided below or by Education Code 45.109(a-1), (a-2), or (a-3) [see CX], the board may not enter into an agreement authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district.

This provision does not prohibit the board from entering into an agreement for the design, construction, or renovation of improvements to real property not owned or leased by the district if the improvements benefit real property owned or leased by the district. Benefits to real property owned or leased by the district include the design, construction, or renovation of highways, roads, streets, sidewalks, crosswalks, utilities, and drainage improvements that serve or benefit the real property owned or leased by the district.

Education Code 11.168

Hotels	The board may not impose taxes; issue bonds; use or authorize the use of district employees; use or authorize the use of district property, money, or other resources; or acquire property for the design, construction, renovation, or operation of a hotel. The board may not enter into a lease, contract, or other agreement that obligates the board to engage in an activity prohibited by this provision or obligates the use of district employees or resources in a manner prohibited by this provision. “Hotel” means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a motel. *Education Code 11.178*
Electioneering	For restrictions on using district funds for electioneering, see BBBD.

Income Tax

Except as otherwise provided in 26 U.S.C. 3402, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary of the Treasury. *26 U.S.C. 3401–3402*

Medicare Tax

The tax imposed by 26 U.S.C. 3101(b) shall be collected by the employer of the taxpayer hired after March 31, 1986, by deducting the amount of the tax from the wages as and when paid. *26 U.S.C. 3102(a), 3121(u)*

Teacher Retirement System

Each payroll period, each employer shall deduct from the compensation of each member employed by the employer the amount required by Government Code 825.402. *Gov't Code 825.403*

Each employer shall pick up the employee contribution required of each of its employees by Government Code 825.403. Employers shall pay to the retirement system the picked-up contributions from the same source of funds that is used in paying earnings to the employees. Such payments shall be in lieu of contributions by the employees. An employer shall pick up these contributions by a corresponding reduction in the cash salary of the employees, by an offset against a future salary increase, or by a combination of a salary reduction and offset against a future salary increase. Employees do not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system. *Gov't Code 825.409(a)*

Retired School Employees Group Insurance Fund

The employer of an active employee shall monthly:

1. Deduct the employee's contribution from the employee's salary and remit the contribution to the Teacher Retirement System of Texas (TRS) in the manner required by TRS; or

2. Assume and pay the total contributions due from its active employees.

"Active employee" means a contributing member of the TRS who is employed by a public school and is not entitled to coverage under a plan provided under Insurance Code Chapter 1551 (Texas Employees Group Benefits Act) or 1601 (State University Employees Uniform Insurance Benefits Act).

Insurance Code 1575.002(1), (7), .203(b)

Child Support Payments

An employer shall begin to withhold income in accordance with an order or writ of withholding issued under Family Code Chapter 158 not later than the first pay period following the date on which the order or writ was delivered to the employer and shall continue to withhold income as required by the order or writ as long as the

obligor is employed by the employer. The employer shall remit the amount to be withheld to the person or office named in the order or writ on each pay date. The payment must include the date on which the withholding occurred.

An employer may deduct an administrative fee of not more than $10 from the obligor's disposable earnings in addition to the amount to be withheld as child support.

Family Code 158.202–.204

Spousal Maintenance

An employer shall begin to withhold income in accordance with an order or writ of withholding issued under Family Code Chapter 8 not later than the first pay period after the date the order or writ was delivered to the employer. The employer shall continue to withhold income as required by the order or writ as long as the obligor is employed by the employer. The employer shall remit to the person or office named in the order or writ of withholding the amount of income withheld from an obligor on each pay date. The remittance must include the date on which the withholding occurred.

An employer may deduct an administrative fee of not more than $5 each month from the obligor's disposable earnings in addition to the amount withheld as spousal maintenance.

Family Code 8.202–.204

Professional or Other Dues

A district employee is entitled to have an amount deducted from the employee's salary for membership fees or dues to a professional organization or an entity providing services to classroom teachers under Education Code 21.417 (TEA Resources for Classroom Teachers). The employee must:

1. File with the district a signed written request identifying the organization or entity; and
2. Inform the district of the total amount of the fees and dues for each year or have the organization or entity notify the district of the amount.

The district shall deduct the total amount of the fees or dues for a year in equal amounts per pay period. The district shall notify the employee not later than the 45th day after the district receives a request of the number of pay periods annually from which the district will deduct the fees or dues. The deductions shall be made until the employee requests in writing that the deductions be discontinued.

The district may charge an administrative fee for making the deduction. A fee imposed may not exceed either the actual administrative cost of making the deduction or the lowest fee the district charges for similar salary deductions, whichever is less.

Education Code 22.001

Social Security

The tax imposed by 26 U.S.C. 3101(a) shall be collected by the employer of designated taxpayers by deducting the amount of the tax from the wages as and when paid. *26 U.S.C. 3101–3102, 3121(b)(7)(E); 26 C.F.R. 31.3121(b)(7)-2*

Federal Education Loans

An employer shall pay to the U.S. Secretary of Education or the guaranty agency as directed in a withholding order issued in an action to recover delinquent federal education loan payments. *20 U.S.C. 1095a(a)(6)*

Prepaid Higher Education Tuition Program

An employee of a district may make payments under a prepaid tuition contract by payroll deductions made by the appropriate officer of the district. *Education Code 54.626(c)*

Higher Education Savings Plan

An employee of a district may make contributions to a higher education savings trust account established under the higher education savings plan by payroll deductions made by the appropriate officer of the district. *Education Code 54.701(10), .708(a)*

Assignments

An employee's assignment, pledge, or transfer, as security for indebtedness, of any interest in or part of the employee's salary or wages then due or that may become due under an existing contract of employment is enforceable only:

1. If before or at the time of execution, delivery, or acceptance of an assignment, pledge, or transfer written approval is obtained in accordance with the policy of the employing district; and
2. To the extent that the indebtedness it secures is a valid and enforceable obligation.

A district shall honor an assignment, pledge, or transfer fulfilling the conditions above without incurring any liability to the employee executing the assignment, pledge, or transfer. Payment to any assignee, pledgee, or transferee in accordance with the terms of the instrument constitutes payment to or for the account of the assignor, pledgor, or transferor. An assignment, pledge, or transfer is enforceable only to the extent of salary due or that may become due during continuation of the assignor's employment as a school employee.

Education Code 22.002

Insurance

A district may withhold from an employee's salary contributions for participation in approved insurance programs. *Insurance Code 1579.253; Education Code 22.005* [See CRD]

Deferred Compensation

A district may enter into a salary reduction agreement to reduce an employee's salary for the purpose of making direct contributions to or purchases of a qualified investment product only if the qualified investment product is an eligible qualified investment. To the greatest degree possible, districts that enter into a salary reduction agreement with employees under this provision shall require that contributions to eligible qualified investments be made by automatic payroll deduction and deposited directly in the investment accounts. *Art. 6228a-5, Secs. 4(5), 5(a), (f) Tex. Rev. Civ. Stat.*

A district may contract with an employee for the deferment of any part of the employee's compensation. To participate in a deferred compensation plan, an employee must consent in the contract to automatic payroll deductions in an amount equal to the deferred amount. *Gov't Code 609.007(a), (c)* [See CRG]

Cafeteria Plans

A district shall withhold from an employee's salary amounts designated by the employee for participation in the district's cafeteria plan authorized under 26 U.S.C. 125.

"Cafeteria plan" means a written plan under which all participants are employees, and the participants may choose among two or more benefits consisting of cash and qualified benefits.

26 U.S.C. 125

Administrative Fee

A district that is required by state or federal law to deduct from the current wages of an employee an amount garnished under a withholding order may deduct monthly an administrative fee from the employee's disposable earnings in addition to the amount required to be withheld under the withholding order. This does not apply to income withholding under Family Code Chapter 158. [See Child Support Payments, above]

The administrative fee may not exceed the lesser of:

1. The actual administrative cost incurred by the district in complying with the withholding order; or

2. $10.

Civil Practice and Remedies Code 63.006

Child Care

The board may authorize a district employee to enter into an agreement with the district to reduce the periodic compensation paid the employee by the district by an amount to be paid for child-care expenses. *Gov't Code 610.021(a)*

Table of Contents

Board Authority 2
Delegation of Authority 2
Purchases Valued at or Above $100,000 2
Methods 2
Site-Based Purchasing 6
Contract Selection Factors 6
Preferences 7
Notice Publication 8
Electronic Bids or Proposals 9
Right to Work 9
Contract with Person Indebted to District 9
Out-of-State Bidders 9
Professional Services 10
Professional Services Procurement Act 10
Contingent Fee Contract for Legal Services 11
Specific Purchases 12
Computers 12
Automated Information System 12
Automated External Defibrillators 12
Insurance 12
Other Purchasing Methods 13
State Purchasing Program 13
Multiple Award Contract Schedule 14
Cooperative Purchasing Program 14
Commitment of Current Revenue 15
Change Orders 15
Criminal Offenses 15
Removal from Office 16
Injunction 16

Note: For legal requirements applicable to purchases with federal funds, see CBB.

For required vendor disclosures and contract provisions, including prohibitions, see CHE.

For provisions pertaining to criminal history record information on contractors, see CJA.

For legal requirements related to energy savings performance contracts, see CL.

For information on procuring school buses, see CNB.

For legal requirements applicable to school nutrition procurement, including produce, with federal funds, see COA.

For information regarding construction of school facilities, see CV series.

Board Authority

The board may adopt rules and procedures for the acquisition of goods and services. *Education Code 44.031(d)*

Delegation of Authority

The board may, as appropriate, delegate its authority regarding an action authorized or required by Education Code Chapter 44, Subchapter B, to be taken by a district to a designated person, representative, or committee.

The board may not delegate the authority to act regarding an action authorized or required to be taken by the board by Education Code Chapter 44, Subchapter B.

Disaster Delegation

Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting a district, the board may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under Education Code Chapter 44, Subchapter B if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

Education Code 44.0312

Purchases Valued at or Above $100,000

Methods

Except as provided by Education Code Chapter 44, Subchapter B, all district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at $100,000 or more in the aggregate for each 12-month period, shall be made by the method, of the following methods, that provides the best value for a district:

1. Competitive bidding for services other than construction services.
2. Competitive sealed proposals for services other than construction services.
3. A request for proposals for services other than construction services.
4. An interlocal contract.
5. A method provided by Government Code Chapter 2269 for construction services [see CV series];
6. The reverse auction procedure as defined by Government Code 2155.062(d).
7. The formation of a political subdivision corporation under Local Government Code 304.001 (purchase of electricity).

Education Code 44.031(a)

Exceptions

Emergency Damage or Destruction

If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*

Sole Source

Without complying with Education Code 44.031(a) above, a district may purchase an item that is available from only one source, including:

1. An item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly.
2. A film, manuscript, or book.
3. A utility service, including electricity, gas, or water.
4. A captive replacement part or component for equipment.

The exceptions above do not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of $15,000.

Education Code 44.031(j)-(k)

Competitive Bidding

Except to the extent prohibited by other law and to the extent consistent with Education Code Chapter 44, Subchapter B, a district may use competitive bidding to select a vendor as authorized by Education Code 44.031(a)(1).

A district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Education Code 44.031(b) [see Contract Selection Factors, below].

Except as provided below, Local Government Code Chapter 271, Subchapter B (Competitive Bidding on Certain Public Works Contracts) does not apply to a competitive bidding process under this policy.

Local Government Code Sections 271.026 (Opening of Bids), 271.027(a) (Award of Contract), and 271.0275 (Safety Record of Bidder Considered) apply to a competitive bidding process under Education Code Chapter 44, Subchapter B. [See CVA for these requirements.]

Education Code 44.0351

[For information on additional competitive procedures under the Public Property Finance Act, see CHH.]

Competitive Sealed Proposals

In selecting a vendor through competitive sealed proposals as authorized by Education Code 44.031(a)(2), a district shall follow the procedures prescribed below.

Request for Proposals

The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

Opening Proposals

The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Selection

The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected

offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.

Education Code 44.0352

Interlocal Contracts

"Interlocal contract" means a contract or agreement made under Government Code Chapter 791 (Interlocal Cooperation Act). *Gov't Code 791.003(2)*

A district, may agree with another local government or with the state or a state agency, including the comptroller, to purchase goods and services. *Gov't Code 791.025(a)*

A district may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods. This provision does not apply to services provided by firefighters, police officers, or emergency medical personnel. *Gov't Code 791.025(b)*

A district that purchases goods and services under Government Code 791.025 satisfies the requirement to seek competitive bids for the purchase of the goods and services. *Gov't Code 791.025(c); Atty. Gen. Op. JC-37 (1999)*

Note: For legal provisions related to interlocal contracts, generally, see GRB.

For legal provisions related to using cooperative purchasing for construction-related services, see CV.

Reverse Auction

A district that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the district and fair to vendors. *Local Gov't Code 271.906(b)*

"Reverse auction procedure" means:

1. A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and internet

location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or

2. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

Gov't Code 2155.062(d)

Site-Based Purchasing

If a purchase is made at the campus level in a district with a student enrollment of 180,000 or more that has formally adopted a site-based decision-making plan under Education Code Subchapter F, Chapter 11 [see BQ series], that delegates purchasing decisions to the campus level, Education Code 44.031 applies only to the campus and does not require the district to aggregate and jointly award purchasing contracts. A district that adopts site-based purchasing under this provision shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Education Code 44.031(a). *Education Code 44.031(m)*

Contract Selection Factors

Except as provided by Education Code Chapter 44, Subchapter B, in determining to whom to award a contract, the district shall consider:

1. The purchase price.
2. The reputation of the vendor and of the vendor's goods or services.
3. The quality of the vendor's goods or services.
4. The extent to which the goods or services meet the district's needs.
5. The vendor's past relationship with the district.
6. The impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses.
7. The total long-term cost to the district to acquire the vendor's goods or services.
8. For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent

company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.

9. Any other relevant factor specifically listed in the request for bids or proposals.

Education Code 44.031(b)

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code 271.9051. This provision does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153. *Education Code 44.031(b-1)*

The factors listed above are the only criteria that may be considered by a district in its decision to award a contract. *R.G.V. Vending v. Weslaco Indep. Sch. Dist., 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.)*

Preferences

Agricultural Products

A district that purchases agricultural products shall give preference to those produced, processed, or grown in Texas if the cost to the district is equal and the quality is equal. If agricultural products produced, processed, or grown in Texas are not equal in cost and quality to other products, the district shall give preference to agricultural products produced, processed, or grown in other states of the United States, if the cost and quality of the U.S. and foreign products are equal.

"Agricultural products" includes textiles and other similar products.

"Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form.

A district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in Texas.

Vegetation for Landscaping

A district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the district is equal and the quality is equal.

Education Code 44.042

[For legal requirements applicable to school nutrition procurement, including produce and agricultural products, with federal funds, see COA.]

Recycled Products

A district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than 10 percent greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules. *30 TAC 328.203*

Subchapter K of 30 Administrative Code (Governmental Entity Recycling and Purchasing of Recycled Materials) does not apply to a district with a student enrollment of less than 10,000 students. *30 TAC 328.204(a)*

A district regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

1. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;
2. Encourage the use of products made of recycled materials; and
3. Ensure to the maximum extent economically feasible that the district purchases products that may be recycled when they have served their intended use.

In developing new procedures and specifications, the district shall encourage the use of recycled products and products that may be recycled or reused.

Health and Safety Code 361.426(b)-(c)

Bidder's Place of Business

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code Section 271.9051. This provision does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. 153. *Education Code 44.031(b-1)*

Notice Publication

Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district's central administrative office is located. In a two-step procure-

ment process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

Electronic Bids or Proposals

A district may receive bids or proposals under Education Code Chapter 44 through electronic transmission if the board adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

Notwithstanding any other provision of Education Code Chapter 44, an electronic bid or proposal is not required to be sealed. A provision of Education Code Chapter 44 that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board.

Education Code 44.0313

Right to Work

While a district is engaged in procuring goods and services or awarding a contract, or overseeing procurement or construction for a public work or public improvement, a district:

1. May not consider whether a vendor is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

Education Code 44.043

Contract with Person Indebted to District

The board by resolution may establish regulations permitting the district to refuse to enter into a contract or other transaction with a person indebted to the district. It is not a violation of Education Code Chapter 44, Subchapter B (Purchases; Contracts) for a district, under regulations adopted under this provision, to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the district.

"Person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the district requiring approval by the board.

Education Code 44.044

Out-of-State Bidders

A district may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted

by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located, or the state in which a majority of the manufacturing relating to the contract will be performed. *Gov't Code 2252.002*

This requirement does not apply to a contract involving federal funds. A district shall use the information published by the comptroller under Government Code 2252.003 (Publication of Other State's Laws on Contracts) to evaluate the bid of a nonresident bidder. A district may rely on information published under Government Code 2252.003 to meet the requirements of Government Code 2252.002. *Gov't Code 2252.003-.004*

"Governmental contract" means a contract awarded by a governmental entity, including a public school district, for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

"Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Gov't Code 2252.001

Professional Services

Education Code 44.031 does not apply to a contract for professional services rendered, including the services of an architect, attorney, certified public accountant, engineer, or fiscal agent. A district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003 (Professional Services Procurement Act) (see below), in lieu of the methods provided by Education Code 44.031. *Education Code 44.031(f)*

Professional Services Procurement Act

Selection

A district may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.003(a)*

Definition

"Professional services" means services:

1. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land survey-

ing, medicine, optometry, professional engineering, real estate appraising, professional nursing, or forensic science;

2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, registered nurse, or a forensic analyst or forensic science expert; or

3. Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Occupations Code Chapter 1053.

Gov't Code 2254.002

[For specific information on procuring architectural or engineering services, see CV. For information on procuring services of physicians, optometrists, and registered nurses under certain circumstances, see Government Code 2254.008.]

Contingent Fee Contract for Legal Services

"Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. The term includes an amendment to a contract for legal services described by this provision if the amendment changes the scope of representation or may result in the filing of an action or the amending of a petition in an existing action. *Gov't Code 2254.101(2)*

Government Code Chapter 2254, Subchapter C provides the manner in which and the situations under which a district may compensate a public contractor under a contingent fee for legal services. That subchapter does not apply to a contract for legal services:

1. Provided to a district under Government Code Chapter 403, Subchapter M; or

2. Entered into by a district for the collection of an obligation, as defined by Government Code 2107.001, that is delinquent [see CCGA(LEGAL) regarding delinquent tax collection] or for services under Government Code 1201.027 [see CCA(LEGAL) regarding issuance of public securities], except that Government Code sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract.

Gov't Code 2254.102

A district may select an attorney or law firm to award a contingent fee contract only in accordance with Government Code

2254.003(a) (Professional Services Procurement Act) [see Selection, above] and Government Code 2254.1032.

In procuring legal services under a contingent fee contract, a district shall:

1. Select a well-qualified attorney or law firm on the basis of demonstrated competence, qualifications, and experience in the requested services; and

2. Attempt to negotiate a contract with that attorney or law firm for a fair and reasonable price.

Gov't Code 2254.1032

Specific Purchases

Computers

A district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts entered into in accordance with Government Code Chapter 2054 or 2157. *Education Code 44.031(i)*

Automated Information System

A district may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method described above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.222* [See 1 Administrative Code Chapter 212 for rules related to purchases of commodity items.]

Automated External Defibrillators

A district that purchases or leases an automated external defibrillator (AED), as defined by Health and Safety Code 779.001, shall ensure that the AED meets standards established by the federal Food and Drug Administration. *Education Code 44.047(a)*

Insurance

A contract for the purchase of insurance is not a contract for professional services. A district must award such a contract using one of the methods in Education Code 44.031. *Atty. Gen. Op. DM-418 (1996)*

Multiyear Contracts

A district may execute an insurance contract for a period longer than 12 months, if the contract complies with Local Government Code 271.903(a) [see Commitment of Current Revenue, below]. If a district executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the district will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

Other Purchasing Methods

State Purchasing Program

The comptroller shall establish a program by which the comptroller performs purchasing services for local governments. The services must include:

1. The extension of state contract prices to participating local governments when the comptroller considers it feasible.
2. Solicitation of bids on items desired by local governments if the solicitation is considered feasible by the comptroller and is desired by the local government.
3. Provision of information and technical assistance to local governments about the purchasing program.

The comptroller may charge a participating local government an amount not to exceed the actual costs incurred by the comptroller in providing purchasing services to the local government under the program.

Local Gov't Code 271.082

District Participation

A district may participate in the purchasing program, including participation in purchases that use the reverse auction procedure, by filing with the comptroller a resolution adopted by the board requesting that the district be allowed to participate on a voluntary basis, and to the extent the comptroller deems feasible, and stating that the district will:

1. Designate an official to act for the district in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the board will direct the decisions of the representative;
2. Be responsible for:
    a. Submitting requisitions to the comptroller under any contract; or
    b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase, and electronically sending to the comptroller reports on actual purchases made under this provision that provide the information and are sent at the times required by the comptroller;
3. Be responsible for making payment directly to the vendor;
4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A district that purchases an item under a state contract or under a reverse auction procedure, sponsored by the comptroller satisfies

any state law requiring the district to seek competitive bids for the purchase of the item.

Local Gov't Code 271.083

Multiple Award Contract Schedule

The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government or any other governmental entity in any state. *Gov't Code 2155.502(a)*

A district may purchase goods or services directly from a vendor under a contract listed on a schedule developed under Government Code Chapter 2155, Subchapter I. A district contracting for the purchase of an automated information system under a contract listed on a schedule shall comply with Government Code 2157.068(e-1) (Purchase of Information Technology Commodity Items) [see Automated Information System, above]. A purchase authorized by this provision satisfies any requirement of state law relating to competitive bids or proposals.

The price listed for a good or service under a multiple award contract is a maximum price. A district may negotiate a lower price for goods or services under a contract listed on a schedule developed under Government Code Chapter 2155, Subchapter I.

Gov't Code 2155.504

Cooperative Purchasing Program

A district may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state. A district that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative organization stating that the district will:

1. Designate a person to act under the direction of, or on behalf of, the district in all matters relating to the program;

2. Make payments to another participating local government or local cooperative organization or directly to a vendor under a contract made under these provisions, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and

3. Be responsible for the vendor's compliance relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

A district that purchases goods or services under these provisions satisfies any state law requiring the district to seek competitive bids for the purchase of the goods or services.

Local Gov't Code 271.102; Atty. Gen. Op. JC-37 (1999)

Cooperative Purchasing Contract Fees

A district that enters into a purchasing contract valued at $25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Local Government Code Chapter 271, Subchapter F (cooperative purchasing program), or under any other cooperative purchasing program authorized for school districts by law shall document a contract-related fee, including a management fee, paid by or to the district and the purpose of each fee under the contract.

The amount, purpose, and disposition of any fee described above must be presented in a written report and submitted annually in an open meeting of the board. The written report must appear as an agenda item. The commissioner of education may audit the written report.

Education Code 44.0331

Commitment of Current Revenue

If a contract for the acquisition, including lease, of real or personal property retains to the board the continuing right to terminate at the expiration of each budget period during the term of the contract, is conditioned on a best efforts attempt by the board to obtain and appropriate funds for payment of the contract, or contains both the continuing right to terminate and the best efforts conditions, the contract is a commitment of a district's current revenue only. *Local Gov't Code 271.903*

Change Orders

For provisions regarding change orders, see CV.

Criminal Offenses

An officer, employee, or agent of a district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Education Code 44.031(a) or (b). An offense under this provision is a Class B misdemeanor and is an offense involving moral turpitude.

"Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be made in one purchase. "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be made in one purchase. "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be made in one purchase.

Education Code 44.032(a)-(b)

An officer, employee, or agent of a district commits an offense if the person with criminal negligence violates Education Code 44.031(a) or (b) other than by conduct described by Education Code 44.032(b). An offense under this provision is a Class B misdemeanor and is an offense involving moral turpitude. *Education Code 44.032(c)*

An officer or employee of a district commits an offense if the officer or employee knowingly violates Education Code 44.031, other than by conduct described by Education Code 44.032(b) or (c). An offense under this provision is a Class C misdemeanor. *Education Code 44.032(d)*

Removal from Office

The final conviction of a person other than a trustee of a district for an offense under Education Code 44.032(b) or (c) above results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under Education Code 44.032 is considered to have committed official misconduct for purposes of Local Government Code Chapter 87, and is subject to removal as provided by that chapter and Texas Constitution Article V, Section 24. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in Texas, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state. *Education Code 44.032(e)*

Injunction

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which the district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this provision is entitled to reasonable attorney's fees as approved by the court. *Education Code 44.032(f)*

Note: For additional legal requirements applicable to purchases with federal funds, see CBB.

Required Vendor Disclosures

Disclosure of Interested Parties

A district may not enter into a contract described below with a business entity unless the business entity submits a disclosure of interested parties to the district at the time the business entity submits the signed contract to the district.

The requirement above applies only to a contract of a district that:

1. Requires an action or vote by the board before the contract may be signed;
2. Has a value of at least $1 million; or
3. Is for services that would require a person to register as a lobbyist under Government Code Chapter 305.

Gov't Code 2252.908

A contract does not require an action or vote by the board if the board has legal authority to delegate to its staff the authority to execute the contract, the board has delegated this authority, and the board does not participate in the selection of the business entity with which the contract is entered into. *1 TAC 46.1(c)*

Exclusions

The disclosure requirement does not apply to a contract with:

1. A publicly traded business entity, including a wholly owned subsidiary of the entity;
2. An electric utility, as defined by Utilities Code 31.002; or
3. A gas utility, as defined by Utilities Code 121.001.

Gov't Code 2252.908(c)(4)-(6)

Required Form

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (TEC) that includes a list of each interested party for the contract of which the contracting business entity is aware; and a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the form set out in Government Code 2252.908(e)(2). *Gov't Code 2252.908(e); 1 TAC 46.5(a)*

The certification of filing and the completed disclosure of interested parties form generated by TEC's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the district that is the party to the contract for which the form is being filed. *1 TAC 46.5(b)*

Deadline

A district that receives a completed disclosure of interested parties form and certification of filing shall notify TEC, in an electronic format prescribed by TEC, of the receipt of those documents not later than the 30th day after the date the board receives the disclosure. *1 TAC 46.5(c); Gov't Code 2252.908(f)*

Contract Voidable

A contract subject to this requirement entered into by a district is voidable for failure to provide the required disclosure of interested parties only if:

1. The district submits to the business entity written notice of the business entity's failure to provide the required disclosure; and
2. The business entity fails to submit to the district the required disclosure on or before the 10th business day after the date the business entity receives the written notice.

Gov't Code 2252.908(f-1)

Contract Changes

The disclosure requirements do not apply to a change made to an existing contract, including an amendment, change order, or extension of a contract except as set out below.

The disclosure requirements apply to a change made to an existing contract, including an amendment, change order, or extension of a contract if:

1. A disclosure of interested parties form was not filed for the existing contract; and either the changed contract requires an action or vote by the board or the value of the changed contract is at least $1 million; or
2. The business entity submitted a disclosure of interested parties form to the district that is a party to the existing contract; and either there is a change to the disclosure; or the changed contract requires an action or vote by the board; or the value of the changed contract is at least $1 million greater than the value of the existing contract.

1 TAC 46.4

Definitions

"Contract" means a contract between a board and a business entity at the time it is voted on by the board or at the time it binds the board, whichever is earlier, and includes an amended, extended, or renewed contract. *1 TAC 46.3(a)*

"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. The term includes an entity through which business is conducted with a district, regardless of whether the en-

tity is a for-profit or nonprofit entity, and does not include a governmental entity or state agency. *Gov't Code 2252.908(a)(1); 1 TAC 46.3(b)*

"Interested party" means a person who has a controlling interest in a business entity with whom a district contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. *Gov't Code 2252.908(a)(3); 1 TAC 46.3(d), (e)*

"Controlling interest" means:

1. An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
2. Membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
3. Service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. This provision does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

1 TAC 46.3(c)

"Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature. *1 TAC 46.3(f)*

"Value" of a contract is based on the amount of consideration received or to be received by the business entity from the district under the contract. *1 TAC 46.3(g)*

Conflict of Interest Questionnaire

Note: See BBFA for additional information applicable to disclosures under Local Government Code Chapter 176, including:

- Definitions;
- Conflicts disclosure statements required to be filed by certain local government officers, including vendors who are also local government officers; and
- Internet posting requirements for conflicts disclosure statements and questionnaires.

A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with the district and:

1. Has an employment or other business relationship with a local government officer of the district, or a family member of the officer, described by Local Government Code 176.003(a)(2)(A);

2. Has given a local government officer of the district, or a family member of the officer, one or more gifts with the aggregate value specified by Local Government Code 176.003(a)(2)(B), excluding any gift described by Local Government Code 176.003(a-1); or

3. Has a family relationship with a local government officer of the district.

Local Gov't Code 176.006(a)

The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

1. The date that the vendor:

   a. Begins discussions or negotiations to enter into a contract with a district;

   b. Submits to the district an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the district; or

2. The date the vendor becomes aware:

   a. Of an employment or other business relationship with a local government officer, or a family member of the officer described by Local Government Code 176.006(a);

   b. That the person has given one or more gifts described by Local Government Code 176.006(a); or

   c. Of a family relationship with a local government officer.

Local Gov't Code 176.006(a-1)

Electronic Filing

The requirements of Local Government Code Chapter 176, including signature requirements, may be satisfied by electronic filing in a form approved by the TEC. *Local Gov't Code 176.008*

Updating Incomplete or Inaccurate Questionnaires

A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate. *Local Gov't Code 176.006(d)*

Validity of Contract

The validity of a contract between a vendor and the district is not affected solely because the vendor fails to comply with these requirements. *Local Gov't Code 176.006(i)*

Violations

A vendor commits an offense if the vendor is required to file a conflict of interest questionnaire under Local Government Code 176.003 and either:

1. Knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5:00 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or

2. Knowingly fails to file an updated questionnaire with the appropriate records administrator not later than 5:00 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.

It is an exception to the application of this provision that the vendor filed the required questionnaire not later than the seventh business day after the date the vendor received notice from the district of the alleged violation.

A board may, at its discretion, declare a contract void if the board determines that a vendor failed to file a conflict of interest questionnaire required by Local Government Code 176.006.

Local Gov't Code 176.013(b), (e), (g)

Prohibited Activities by Vendors

"Vendor" means a company, individual, contractor, subcontractor, or professional services provider with whom a district enters into an agreement, contract, memorandum of understanding, interlocal agreement, fee schedule, retainer, or similar instrument for goods or services.

A vendor that bids on or receives a contract from a district commits an offense if any individual serving on the board of the district:

1. Has a substantial interest in the vendor or a subcontractor hired by a vendor;

2. Is related in the second degree by consanguinity or affinity, as determined under Government Code Chapter 573 (Nepotism) to an individual who has a substantial interest in the vendor; or

3. Has received or has been promised a gift or in-kind services with a value of more than $250.

An individual has a substantial interest in a vendor if the individual:

1. Owns more than 10 percent of the voting interest in the vendor; or

2. Has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10 percent of the profits, proceeds, or capital gains of the vendor.

A first offense is a Class C misdemeanor, a second offense is a Class B misdemeanor, a third offense is a Class A misdemeanor, and a fourth or subsequent offense is a state jail felony. Any offense is a state jail felony if the vendor directly or indirectly through a third party compensated the individual serving on the board with money, gifts, or in-kind services as consideration for the district entering into a contract with the vendor.

Education Code 11.067

Required Contract Provisions

Boycott Prohibitions

Israel

A district may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it does not boycott Israel and will not during the term of the contract.

The requirement above applies only to a contract that:

1. Is between a district and a company with 10 or more full-time employees; and

2. Has a value of $100,000 or more that is to be paid wholly or partly from public funds of the district.

Gov't Code 2271.002

"Boycott Israel" has the meaning assigned by Government Code 808.001.

"Company" has the meaning assigned by Government Code 808.001, except that the term does not include a sole proprietorship.

Gov't Code 2271.001(1), (2)

Energy Companies

A district may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

The requirement above applies only to a contract that:

1. Is between a district and a company with 10 or more full-time employees; and

2. Has a value of $100,000 or more that is to be paid wholly or partly from public funds of the district.

The requirement above does not apply to a district that determines the requirements are inconsistent with the district's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

Gov't Code 2274.002

"Boycott energy company" has the meaning assigned by Government Code 808.001.

"Company" has the meaning assigned by Government Code 809.001, except that the term does not include a sole proprietorship.

Gov't Code 2274.001(1), (2)

No Discrimination Against Firearm and Ammunition Industries

A district may not enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

The requirement above applies only to a contract that:

1. Is between a district and a company with at least 10 full-time employees; and

2. Has a value of $100,000 or more that is paid wholly or partly from public funds of the district.

The requirement above does not apply to a district that contracts with a sole-source provider or does not receive bids from a company that is able to provide the required written verification.

Gov't Code 2274.002

[For definitions, see Government Code 2274.001.]

Retention of Contracting Information

Application

These provisions apply to a contract that:

1. Has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by the district; or

2. Results in the expenditure of at least $1 million in public funds for the purchase of goods or services by the district in a fiscal year of the district.

A board may not accept a bid for a contract described above or award the contract to an entity that the board has determined has knowingly or intentionally failed to comply with Government Code Chapter 552, Subchapter J (Additional Provisions Relating to Contracting Information) in a previous bid or contract described above unless the board determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of that subchapter. [For additional information and requirements, see GBA and GBAA.]

Requirements

A contract described above must require a contracting entity to:

1. Preserve all contracting information related to the contract as provided by the records retention requirements applicable to the district for the duration of the contract;

2. Promptly provide to the district any contracting information related to the contract that is in the custody or possession of the entity on request of the district; and

3. On completion of the contract, either:

    a. Provide at no cost to the district all contracting information related to the contract that is in the custody or possession of the entity; or

    b. Preserve the contracting information related to the contract as provided by the records retention requirements applicable to the district.

Bid and Contract Language

Except as described at Exception, below, a bid for a contract described above and the contract must include the following statement: “The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include “bid” or “contract” as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.”

Notice of Noncompliance

A board that is the party to a contract described above shall provide notice to the entity that is a party to the contract if the entity fails to comply with a requirement of Government Code Chapter 552, Subchapter J applicable to the entity. The notice must:

1. Be in writing;

2. State the requirement that the entity has violated; and

3. Unless the exception described below applies, advise the entity that the board may terminate the contract without further obligation to the entity if the entity does not cure the violation on or before the 10th business day after the date the board provides the notice.

Contract Termination

Except as provided below, a governmental body may terminate a contract described above if:

1. The board provides the required notice to the entity that is party to the contract;
2. The contracting entity does not cure the violation in the prescribed period;
3. The board determines that the contracting entity has intentionally or knowingly failed to comply with a requirement of Government Code Chapter 552, Subchapter J; and
4. The board determines that the entity has not taken adequate steps to ensure future compliance with the requirements of that subchapter.

An entity has taken adequate steps to ensure future compliance with Government Code Chapter 552, Subchapter J if:

1. The entity produces contracting information requested by the board that is in the custody or possession of the entity not later than the 10th business day after the date the board makes the request; and
2. The entity establishes a records management program to enable the entity to comply with Government Code Chapter 552, Subchapter J.

Exception

A board may not terminate a contract under these provisions if the contract is related to the purchase or underwriting of a public security, the contract is or may be used as collateral on a loan, or the contract's proceeds are used to pay debt service of a public security or loan.

Gov't Code 552.371(a), .372-.374 [See GBA]

Prohibitions

Entertainment Event Contracts

A person, including a board, may not include a provision in a contract related to a parade, concert, or other entertainment event paid for in whole or in part with public funds that prohibits or would otherwise prevent the disclosure of information relating to the receipt or expenditure of public or other funds by a board for the event. A contract provision that violates Government Code 552.104(c) is void. *Gov't Code 552.104(c)* [See GBA for information related to competition or bidding.]

Taxpayer Resource Transactions

A district may not enter into a taxpayer resource transaction with an abortion provider or an affiliate of an abortion provider or an abortion assistance entity for the purpose of providing an abortion or abortion assistance. *Gov't Code 2273.003(a)*

A district may not enter into a taxpayer resource transaction or appropriate or spend money to provide to any person logistical support for the express purpose of assisting a woman with procuring an abortion or the services of an abortion provider. Logistical support includes providing money for child care; travel or any form of transportation to or from an abortion provider; lodging; food or food preparation; counseling that encourages a woman to have an abortion; and any other service that facilitates the provision of an abortion. *Gov't Code 2273.0031(a)*

"Taxpayer resource transaction" means a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity receives something of value in return.

"Affiliate" means a person or entity who enters into with another person or entity a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

1. Common ownership, management, or control between the parties to the relationship;
2. A franchise granted by the person or entity to the affiliate; or
3. The granting or extension of a license or other agreement authorizing the affiliate to use the other person's or entity's brand name, trademark, service mark, or other registered identification mark.

Gov't Code 2273.001(3), (5)

Lobbying Restriction — Tobacco Education Grant Funds

A district receiving funds or grants from the Permanent Fund for Health and Tobacco Education and Enforcement may not use the funds to pay:

1. Lobbying expenses incurred by the district;
2. A person or entity that is required to register with the Texas Ethics Commission under Government Code Chapter 305 (Registration of Lobbyists);

3. Any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by item 2; or

4. A person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.

Gov't Code 403.1067(a)

Contracts with Listed Companies

A district may not enter into a governmental contract with a company identified on a list prepared and maintained under Government Code 806.051 (now Government Code 2270.0201) (companies with business operations in Sudan), 807.051 (now Government Code 2270.0102) (companies with business operations in Iran), and 2252.153 (companies known to have contracts with or provide supplies or services to foreign terrorist organization). *Gov't Code 2252.152*

"Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment. The term includes a contract to obtain professional services subject to Government Code 2254. *Gov't Code 2252.151(3)*

Certain Library Material Vendors

A district may not purchase library material from a library material vendor on the list created by the Texas Education Agency under Education Code 35.003(c). [See EFB] *Education Code 35.003(d)*

Payment Due

Except as provided below, a payment by a district under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of:

1. The date the district receives the goods under the contract;
2. The date the performance of the service under the contract is completed; or
3. The date the district receives an invoice for the goods or services.

Exception

A payment under a contract executed on or after September 1, 1993, owed by a district whose board meets only once a month or less frequently is overdue on the 46th day after the later event described above. The renewal, amendment, or extension of a contract executed on or before September 1, 1993, is considered to be the execution of a new contract.

Gov't Code 2251.021

Interest

A payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of one percent and the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

Interest on an overdue payment stops accruing on the date a district or vendor mails or electronically transmits the payment.

The unpaid balance of a partial payment made within the prescribed period accrues interest, unless the balance is in dispute.

Gov't Code 2251.025, .029

A district shall:

1. Compute interest imposed on the district.
2. Pay the interest at the time payment is made on the principal.
3. Submit the interest payment with the net amount due for the goods or service.

A district may not:

1. Require a vendor to petition, bill, or wait an additional day to receive the interest due.

2. Require a vendor or subcontractor to agree to waive the vendor's or subcontractor's right to interest as a condition of the contract.

Gov't Code 2251.027

Early Payment Discount

A district should take advantage of an offer for an early payment discount. A district may not take an early payment discount unless the district makes a full payment within the discount period. If a district takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires. *Gov't Code 2251.030*

Exceptions

These provisions do not apply to a payment made by a district, vendor, or subcontractor if:

1. There is a bona fide dispute between the district and a vendor, contractor, subcontractor, or supplier about the goods delivered or the service performed that causes the payment to be late;

2. There is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the services performed that causes the payment to be late;

3. The terms of a federal contract, grant, regulation, or statute prevent the district from making a timely payment with federal funds; or

4. The invoice is not mailed to the person to whom it is addressed in strict accordance with any instruction on the purchase order relating to the payment.

A bona fide dispute with respect to a contract for the construction of a public work does not include an audit of the public work project that continues for more than 60 days after the date of the substantial completion of the project.

Gov't Code 2251.002

Disputed Payment

A district shall notify a vendor of an error or disputed amount in an invoice submitted for payment by the vendor not later than the 21st day after the date the district receives the invoice, and shall include in such notice a detailed statement of the amount of the invoice which is disputed. If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance beginning on the date that the payment for the invoice is overdue. If a dispute is resolved in favor of the district, the vendor shall submit a corrected invoice that must be paid in accordance with Govern-

ment Code 2251.021 [see Payment Due above]. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date. The district may withhold from payments required no more than 110 percent of the disputed amount. *Gov't Code 2251.042*

Vendor Remedy for Nonpayment

A vendor may suspend performance required under a contract with a district if the district does not pay the vendor an undisputed amount within the time limits provided above, and the vendor gives the district written notice informing the district that payment has not been received and stating the intent of the vendor to suspend performance for nonpayment.

The vendor may not suspend performance before the tenth day after the date the vendor gives this notice.

A vendor who suspends performance is not:

1. Required to supply further labor, services, or materials until the vendor is paid the amount provided for under Government Code Chapter 2251, plus costs for demobilization and remobilization; or

2. Responsible for damages resulting from suspending work if the district with which the vendor has the contract has not notified the vendor in writing before performance is suspended that payment has been made or that a bona fide dispute for payment exists.

A notification that a bona fide dispute for payment exists must include a list of the specific reasons for nonpayment. If a reason specified is that labor, services, or materials provided by the vendor or the vendor's subcontractor are not provided in compliance with the contract, the vendor is entitled to a reasonable opportunity to cure the noncompliance of the listed items, or offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

Gov't Code 2251.051

Employment Assistance Prohibited

A district that receives Title I funds shall have regulations or policies that prohibit any individual who is a school employee, contractor, or agent, or a district, from assisting a school contractor or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or district knows, or has probable cause to believe, that such contractor or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

This requirement shall not apply if the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the implementing regulations under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations; and:

1. The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the contractor or agent engaged in sexual misconduct regarding a minor or student in violation of the law;
2. The contractor or agent has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or
3. The case or investigation remains open and there have been no charges filed against, or indictment of, the contractor or agent within four years of the date on which the information was reported to a law enforcement agency.

20 U.S.C. 7926 [See also DC]

Severance Pay

A district that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an independent contractor must include:

1. A requirement that severance pay that is paid from public money may not exceed the amount of compensation, at the rate at the termination of the contract, the independent contractor would have been paid for 20 weeks, excluding paid time off or accrued vacation leave; and
2. A prohibition of the provision of severance pay when the independent contractor is terminated for misconduct.

A district shall post each severance agreement in a prominent place on its internet website.

"Misconduct" means an act or omission by a contractor in the performance of the contractor's duties that the board determines to be misconduct, including any finding of criminal conduct.

"Severance pay" means dismissal or separation income paid on termination of the contract of an independent contractor that is in addition to the contractor's usual compensation as prescribed by the contract.

[For provisions related to severance agreements for district employees, see DEA.]

Local Gov't Code 180.011

Prohibition on Diversity, Equity, and Inclusion

A district shall adopt a policy and procedure for the appropriate discipline, including termination, of a district 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 contractor.

The policy and procedure adopted by a district must ensure that a 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) [See also DF]

Prohibited Classroom Instruction

A district shall adopt a policy and procedure for the appropriate discipline, including termination, of a district or school 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 contractor. *Education Code 28.0022(h)* [See also DF, EMD]

Sexual Orientation and Gender Identity

A district or district employee may not allow a third party to provide instruction, guidance, activities, or programming regarding sexual orientation and gender identity to students enrolled in prekindergarten through 12th grade.

This provision may not be construed to:

1. Limit a student's ability to engage in speech or expressive conduct protected by the First Amendment, U.S. Constitution or by Section 8, Article I, Texas Constitution, that does not result in material disruption to school activities;

2. Limit the ability of a person who is authorized by the district to provide physical or mental health-related services to provide the services to a student, subject to any required parental consent; or

3. Prohibit an organization whose membership is restricted to one sex and whose mission does not advance a political or social agenda from meeting on a district campus.

Education Code 28.0043 [See also EMB]

Employment Assistance Prohibited

No District employee shall assist a contractor or agent of the District or of any other school district in obtaining a new job if the employee knows, or has probable cause to believe, that the contractor or agent engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative file does not violate this prohibition.

No District contractor or agent shall assist an employee, contractor, or agent of the District or of any other school district in obtaining a new job if the contractor or agent knows, or has probable cause to believe, that the individual engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition.

[See also DC for prohibitions relating to employees.]

Prohibited Classroom Instruction or Activities

A District contractor is prohibited from intentionally or knowingly engaging in or assigning to another individual instruction, guidance, activities, or programming prohibited by law [see EMB(LEGAL)]. Violation of this policy shall result in termination of the contract. A District contractor shall be permitted to appeal this action in accordance with GF(LOCAL).

Prohibition on Diversity, Equity, and Inclusion

A contract is subject to termination if the District contractor intentionally or knowingly:

- Engages in diversity, equity, and inclusion (DEI) duties.
- Assigns to another individual DEI duties.

A District contractor shall be permitted to appeal this action in accordance with GF(LOCAL).

[See BT(LEGAL)]

Contractor's Notification of Felony Conviction

A person or business entity that enters into a contract with a district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. A district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give such notice or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract. *Education Code 44.034*

National Criminal History Record Information (NCHRI) Reviews

Definitions

"Contracting entity" means an entity that contracts directly with a district to provide services to the district.

"Public works contractor" means an entity that contracts directly or subcontracts with an entity that contracts with a district, to provide services to the district.

"Qualified school contractor" means an entity that:

1. Contracts or subcontracts to provide services to a district; and
2. Is determined eligible by the Department of Public Safety (DPS) to obtain criminal history record information under the National Child Protection Act of 1993 (34 U.S.C. Section 40101 et seq.) for an employee, applicant for employment, or volunteer of the qualified school contractor.

"Subcontracting entity" means an entity that contracts with another entity that is not a district to provide services to a district.

Education Code 22.0834(p); Gov't Code 411.12505(a)

"Continuing duties related to contracted services" are work duties that are performed pursuant to a contract to provide services to a district on a regular, repeated basis rather than infrequently or one-time only. *19 TAC 153.1101(2)*

"Direct contact with students" is the contact that results from activities that provide substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional district employee. Contact with students that results from services that do not provide substantial opportunity for unsupervised interaction with a student or students, such as addressing an assembly, officiating a sports contest, or judging an extracurricular event, is not, by itself, direct contact with students. However, direct contact with students does result from any activity that provides substantial opportunity for unsupervised contact with students, which might include, without limitation, the provision of coaching, tutoring, or other services to students. *19 TAC 153.1101(7)*

Contractors with Continuing Duties and Direct Contact with Students

These requirements apply to a person who is not an applicant for or holder of a certificate under Education Code Chapter 21, Subchapter B (Certified Educators), and who is offered employment by an entity or a subcontractor of an entity that contracts with a district if:

1. The employee or applicant has or will have continuing duties related to the contracted services; and
2. The employee or applicant has or will have direct contact with students.

Education Code 22.0834(a)

If a contracting or subcontracting entity determines that these criteria do not apply to an employee, the entity shall make a reasonable effort to ensure that the conditions or precautions that resulted in that determination continue to exist throughout the time that the contracted services are provided. *Education Code 22.0834(l)*

Exception — Public Works Contractors

These requirements do not apply to an employee or applicant of a public works contractor if:

1. The public work does not involve the construction, alteration, or repair of an instructional facility as defined by Education Code 46.001;
2. For public work that involves construction of a new instructional facility, the person's duties related to the contracted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or
3. For a public work that involves an existing instructional facility:
    a. The public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
    b. The contracting entity adopts a policy prohibiting employees, including subcontracting entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

Education Code 22.0834(a-1)

Qualified School Contractors

If the contracting entity is a qualified school contractor [see Definitions, above], a person must submit to a NCHRI review by the qualified school contractor before being employed or serving in a capacity described above.

Subcontracting Entities	A qualified school contractor acting as a contracting entity shall require that any of its subcontracting entities obtain all criminal history record information (CHRI) that relates to an employee if the subcontracting entity is also a qualified school contractor. A qualified school contractor shall require that any of its subcontracting entities that are not qualified school contractors comply with the requirements at Other Contractors, below. *Education Code 22.0834(b), (d-1), (d-2)*
Other Contractors	If the contracting entity or subcontracting entity is not a qualified school contractor, a person must submit to a NCHRI review by the district. *Education Code 22.0834(b-1)* The requirements for qualified school contractors and subcontracting entities, above, do not apply to a qualified school contractor if a district obtains the CHRI of a person through the criminal history clearinghouse. *Education Code 22.0834(e)*
DPS Criminal History Clearinghouse	Before or immediately after employing or securing the services of a person, the qualified school contractor or district shall send or ensure that the person sends to DPS information that is required by DPS for obtaining NCHRI, which may include fingerprints and photographs. DPS obtains the person's NCHRI and reports the results through the criminal history clearinghouse as provided by Government Code 411.0845. A qualified school contractor or a district shall obtain all CHRI that relates to a person through the criminal history clearinghouse. *Education Code 22.0834(c), (d)*
Emergency	In the event of an emergency, a district may allow a person to whom these requirements apply to enter district property if the person is accompanied by a district employee. A district may adopt rules regarding an emergency situation under this provision. *Education Code 22.0834(f)*
Criminal History Record Information	A district or qualified school contractor may obtain from any law enforcement or criminal justice agency all CHRI that relates to a person. *Education Code 22.0834(h)*
Certification to District	A qualified school contractor shall certify to the district or shared services arrangement that the entity has received all CHRI relating to a person who is employed by or under a current offer of employment by the qualified school contractor. *Education Code 22.0834(q)*

Disqualifying Conviction

A district, qualified school contractor, contracting entity, or subcontracting entity may not permit a person to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Education Code 22A.157(a). *Education Code 22.0834(o)*

District Responsibility to Ensure Compliance

A district may not allow a person who is an employee of or applicant for employment by a qualified school contractor or an entity that contracts with the district to serve for the district if the district obtains information showing a disqualifying conviction through a CHRI review concerning the employee or applicant. A district must ensure that an entity that the district contracts with for services has obtained all required CHRI. *Education Code 22A.157(c)*

Note: See DBAA for definitions and provisions regarding confidentiality, unauthorized disclosure, destruction, consumer credit reports, records retention, and criminal history record checks of employees.

Contractors Providing Transportation Services

Except as provided below at Commercial Transportation Company, a district that contracts with a person for transportation services shall obtain from any law enforcement or criminal justice agency all CHRI that relates to a person employed by the person as a bus driver or a person the person intends to employ as a bus driver. A person who contracts with a district to provide transportation services shall submit to the district the name and other identification data required to obtain the CHRI of such persons. If a district obtains information that such a person has been convicted of a felony or a misdemeanor involving moral turpitude, the district shall inform the chief personnel officer of the person with whom the district has contracted, and the person may not employ that person to drive a bus on which students are transported without the permission of the board of the district. *Education Code 22.084(a)-(b)*

Commercial Transportation Company

A commercial transportation company that contracts with a district to provide transportation services may obtain from any law enforcement or criminal justice agency all CHRI that relates to a person employed by the company as a bus driver, bus monitor, or bus aide, or a person the company intends to employ in one of these positions. If the company obtains information that a person employed or to be employed has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not employ that person to drive or to serve as a bus monitor or bus aide on a bus on which students are transported without the permission of the board of the district. If a commercial transportation company obtains CHRI, a district is not required to do the same. *Education Code 22.084(c)-(d)*

Requirement to Report Service Provider Misconduct

Definition

"Service provider" means a person who provides services to an educational entity. The term includes:

1. A contractor or subcontractor for a district;
2. A provider of tutoring services for a district;
3. An entity that has entered into a contract to operate a school district campus under Education Code 11.174 [see ELA, Partnership Charters];
4. A staffing provider for a district; and
5. A person employed by or under the control of a person described above.

Education Code 22A.001(8)

Reportable Misconduct

For a service provider who has or will have direct contact with students, in addition to the reporting requirement under Family Code 261.101 [see FFG], the superintendent shall notify the commissioner if the superintendent becomes aware of evidence or obtains CHRI that a service provider:

1. Abused or otherwise committed an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Penal Code Chapter 9, regardless of whether the conduct resulted in bodily injury;
2. Was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact with a student or minor;
3. Engaged in inappropriate communications with a student or minor, as defined by State Board for Educator Certification (SBEC) rule; or
4. Failed to maintain appropriate boundaries with a student or minor, as defined by SBEC rule.

Education Code 22A.051(a)(2)(A)-(D); .052(a), (b)

Principal Report to Superintendent

The principal of a district campus must notify the superintendent not later than 48 hours after the principal becomes aware of evidence of an alleged incident of reportable misconduct. *Education Code 22A.052(d)*

Superintendent Must Complete an Investigation

A superintendent shall complete an investigation of a service provider that involves evidence that the person may have engaged in reportable misconduct despite the person's termination of or

cessation of services for the district before completion of the investigation. *Education Code 22A.052(c)*

Deadline for Written Report to TEA

The superintendent must notify the commissioner by filing a report with the commissioner not later than 48 hours after the superintendent:

1. Receives notice from a principal;
2. Knew about the termination of or cessation of services of a service provider for the district following an alleged incident of misconduct; or
3. Becomes aware of evidence of misconduct.

The report must be in writing, in a form prescribed by the commissioner, and filed through the internet portal developed and maintained by the Texas Education Agency (TEA). The superintendent shall notify the board and the person who is the subject of the report of the filing of the report.

The name of a student or minor who is the victim of abuse or unlawful conduct must be included in a report, but the name of the student or minor is not public information under Government Code Chapter 552 (Public Information Act).

Education Code 22A.052(e)-(g), (j)

Immunity for Reporting

A superintendent who in good faith and while acting in an official capacity files a report with the commissioner or a principal who in good faith and while acting in an official capacity notifies a superintendent is immune from civil or criminal liability that might otherwise be incurred or imposed. *Education Code 22A.052(h)*

Failure to Report

The commissioner shall refer an educator who fails to file a report to SBEC, and SBEC shall determine whether to impose sanctions against the educator. *Education Code 22A.052(i)*

A superintendent required to file a report commits an offense if the superintendent fails to file the report by the date required with intent to conceal a person's criminal record or alleged incident of misconduct. A principal required to notify a superintendent about a person's alleged incident of misconduct commits an offense if the principal fails to provide the notice by the date required with intent to conceal a person's alleged incident of misconduct. An offense is a state jail felony. *Education Code 22A.052(k)*

Commissioner Access to District Records

The commissioner may review the records of a district to ensure compliance with the requirement to report misconduct. *Education Code 22A.052(l)*

Notice to Parents of Alleged Misconduct

The board shall adopt a policy under which notice is provided to the parent or guardian of a student with whom a person acting as a service provider for the school is alleged to have engaged in reportable misconduct informing the parent or guardian:

1. That the alleged misconduct occurred;
2. Whether the person was terminated following an investigation of the alleged misconduct or resigned before completion of the investigation; and
3. Whether a report was submitted to the agency or SBEC concerning the alleged misconduct.

The policy must require that the information be provided as soon as feasible after the district becomes aware that alleged misconduct may have occurred.

[See FFF for provisions related to parental notice.]

Education Code 22A.053

Consent for Release of Records and Pre-Service Affidavit

Required Disclosures

A person who will act as a service provider for a district must submit, using a form adopted by TEA, consent for release of the person's employment records and a pre-service affidavit disclosing whether the person has ever been:

1. Investigated by a law enforcement or child protective services agency for, or charged with, adjudicated for, or convicted of, an offense involving reportable misconduct;
2. Investigated by a licensing authority or had a license, certificate, or permit denied, suspended, revoked, or subject to another sanction in this state or another state for reportable misconduct;
3. Included in the Do Not Hire Registry;
4. Employed or is currently employed by or has acted or is currently acting as a service provider for a public or private school; or
5. Terminated or discharged or has resigned, in lieu of being terminated or discharged, from a public or private school.

A person who answers affirmatively concerning an action listed above must disclose in the affidavit all relevant facts known to the person pertaining to the matter, including, if applicable to the action, whether the allegation was determined to be true or false.

Continued Employment After Disclosure

A service provider is not precluded from providing services to an educational entity based on a disclosed allegation if the district determines based on the information disclosed in the affidavit that the allegation was false.

A determination that a person providing services failed to disclose information required to be disclosed is grounds for termination of employment or service.

A district shall discharge or refuse to allow to act as a service provider for the district a person against whom such a determination has been made.

Failure to Disclose

SBEC may revoke the certificate of an administrator if it determines it is reasonable to believe that the administrator accepted services from a service provider despite being aware that the person knowingly failed to disclose information required to be disclosed.

A person commits an offense if the person fails to disclose information required to be disclosed. An offense is a Class B misdemeanor.

Education Code 22A.055

Authority to Obtain CHRI

A district or an entity that contracts to provide services to a district is entitled to obtain CHRI that the district or entity is required or authorized to obtain under Education Code Chapter 22, Subchapter C, that relates to a person who is:

1. An employee of or an applicant for employment with a public or commercial transportation company that contracts with the district to provide transportation services if the employee drives or the applicant will drive a bus in which students are transported or is employed or is seeking employment as a bus monitor or bus aide on a bus in which students are transported;
2. An employee of or applicant for employment by an entity that contracts to provide services to a district or shared services arrangement as provided by Education Code 22.0834, above;
3. An employee of or applicant for employment by a subcontractor of an entity that contracts to provide services to a district or shared services arrangement as provided by Education Code 22.0834, above; or
4. A tutor who provides services on behalf of a service provider that offers accelerated or supplemental instruction under Education Code 28.0211.

Gov't Code 411.097(a)

Emergencies

In an emergency due to a health or safety concern, a reasonably unforeseeable situation, or other exigent circumstance, the District employee who is in charge of the facility shall be authorized to determine whether an employee of a contracting or subcontracting entity who does not have the required criminal history record information (CHRI) review or who has a disqualifying conviction will be permitted to enter a District facility.

If allowed to enter the facility, the employee of the contracting or subcontracting entity shall be accompanied by a District employee at all times.

Safety and Security Committee

Responsibilities

In accordance with guidelines established by the Texas School Safety Center (TxSSC), each district shall establish a school safety and security committee. The committee shall:

1. Participate on behalf of the district in developing and implementing emergency plans consistent with the district multihazard emergency operations plan to ensure that the plans reflect specific campus, facility, or support services needs, including recommended accommodations for a student with an individualized education program (IEP) or a plan created under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794) (Section 504);
2. Periodically provide recommendations to the board and district administrators regarding updating the district multihazard emergency operations plan [see CKC] in accordance with best practices identified by the Texas Education Agency (TEA), the TxSSC, or a person included in the registry of persons providing school safety or security consulting services established by the TxSSC;
3. Provide the district with any campus, facility, or support services information required in connection with a safety and security audit, a safety and security audit report, or another report required to be submitted by the district to the TxSSC;
4. Review each report required to be submitted by the district to the TxSSC to ensure that the report contains accurate and complete information regarding each campus, facility, or support service in accordance with criteria established by the center; and
5. Consult with local law enforcement agencies on methods to increase law enforcement presence near district campuses.

Membership

The committee, to the greatest extent practicable, must include:

1. One or more representatives of an office of emergency management of a county or city in which the district is located;
2. One or more representatives of the local police department or sheriff's office;
3. One or more representatives of the district's police department, if applicable;
4. The president of the board;
5. A member of the board other than the president;
6. The superintendent;

7. Two or more designees of the superintendent, one of whom must be a classroom teacher in the district and one of whom must be an administrator of special education in the district;

8. If the district partners with an open-enrollment charter school to provide instruction to students, a member of the open-enrollment charter school's governing body or a designee of the governing body; and

9. Two parents or guardians of students enrolled in the district.

Meetings

Except as otherwise provided for year-round schools, the committee shall meet at least once during each academic semester and at least once during the summer. The committee shall also meet as necessary to provide recommendations, based on communications with campus administrators described by commissioner rule [see CKC], for updating the district emergency operations plan to include recommended accommodations for a student with an IEP or Section 504 plan. A committee established by a district that operates schools on a year-round system or in accordance with another alternative schedule shall meet at least three times during each calendar year, with an interval of at least two months between each meeting.

The committee is subject to Government Code Chapter 551 (Open Meetings Act) and may meet in executive session as provided by that chapter. The committee shall meet in executive session when discussing information regarding a student's IEP or Section 504 plan. Notice of a committee meeting must be posted in the same manner as notice of a board meeting. [See BE]

Education Code 37.109

Sheriff-Led School Safety Meetings

The sheriff of a county in which a district is located shall call and conduct a meeting to discuss:

1. School safety;

2. Coordinated law enforcement response to school violence incidents;

3. Law enforcement agency capabilities;

4. Available resources;

5. Emergency radio interoperability;

6. Chain of command planning;

7. Each public school’s multihazard emergency operations plan, including a discussion and analysis of how the school’s multi-

hazard emergency operations plan would be implemented in an emergency situation; and

8. Other related subjects proposed by a person in attendance at the meeting.

The sheriff of a county to which this requirement applies in which more than one district is located may discuss school safety policies for more than one district or open-enrollment charter school in a meeting. This requirement does not require districts or schools located within the same county to adopt the same school safety policies.

Counties With Population Less Than 350,000

In a county with a population of less than 350,000, the meeting shall be held at least twice each calendar year, not less than three months apart and the following persons shall attend the meeting:

1. The sheriff or the sheriff's designee;
2. The police chief of a municipal police department in the county or the police chief’s designee;
3. Each elected constable in the county or the constable’s designees;
4. Each police chief of a school district’s police department or school district security coordinator from each school district located in the county;
5. A representative of DPS assigned to the county;
6. A representative of each other state agency with commissioned peace officers assigned to the county;
7. A person appointed to a command staff position at an emergency medical service in the county;
8. A person appointed to a command staff position at a municipal emergency medical service in the county;
9. A person appointed to a command staff position at a fire department in the county;
10. The superintendent or the superintendent’s designee of each school district located in the county;
11. The person who serves the function of superintendent, or that person’s designee, in each open-enrollment charter school located in the county;
12. A representative of the Texas Division of Emergency Management (TDEM); and

13. Any other person the sheriff considers appropriate.

Counties With Population 350,000 or More

In a county with a population of 350,000 or more, the meeting shall be held annually and the following persons shall attend the meeting:

1. For each district located in the county, either:
    a. The police chief of the district's police department, or the chief's designee; or
    b. If the district contracts with another political subdivision for law enforcement services, the chief administrative officer of the law enforcement agency providing law enforcement services to the district, or the officer's designee;
2. The superintendent of each district located in the county; and
3. Any other person the sheriff considers appropriate.

Federal Officials

The sheriff shall invite any federal law enforcement official serving in the county to attend the meeting.

Report to TxSSC

As soon as practicable after the meeting, the sheriff shall submit a report to the TxSSC identifying the attendees of the meeting and the subjects discussed. The TxSSC shall maintain the report and make it publicly available on its internet website. The TxSSC may not make publicly available and shall redact any parts of a report that it determines may expose a safety vulnerability of a school district facility.

Local Gov't Code 85.024

Public Information Officer for Emergency Communications

Each district shall employ or appoint a public information officer whose duties include communicating with the public during a disaster regarding the disaster.

Certification and Continuing Education

The public information officer must obtain certification in emergency communications from TDEM not later than the first anniversary of the date the public information officer was hired or appointed. The public information officer must complete a continuing education program on emergency communications approved by TDEM once during each 12-month period beginning on the date the public information officer obtained certification.

TDEM shall establish minimum education and training requirements for initial certification and continuing education. The requirements must comply with the policies and standards developed by the Texas Commission on Law Enforcement (TCOLE) as minimum

standards for law enforcement agencies. The minimum requirements must include courses on:

1. The National Incident Management System;
2. The Incident Command System; and
3. The basic skills and principles necessary to fulfill the role of a public information officer with respect to emergency communications.

[For the requirement that a law enforcement agency have a public information officer, see CKEA.]

TDEM shall assist entities required to appoint a public information officer in identifying approved training programs.

The following courses may be taken to satisfy minimum education and training requirements:

1. A course provided by the Bill Blackwood Law Enforcement Management Institute of Texas; or
2. A course approved by TCOLE.

Maintenance and Submission of Records

Each district shall maintain records that demonstrate the compliance of each public information officer employed or appointed by that entity with the certification and continuing education requirements. Each district shall submit to TDEM these compliance records.

Gov't Code 418.331-.334

Agreements

Each district that enters into a memorandum of understanding or mutual aid agreement addressing issues that affect school safety and security shall, at the TxSSC's request, provide a copy of the memorandum or agreement. A copy of a memorandum of understanding or mutual aid agreement provided to the TxSSC under this provision is confidential and not subject to disclosure under Government Code Chapter 552. *Education Code 37.2121(d), (d-1)*

Sharing School Safety Training with Private Providers

"Accredited private school" means a private school accredited by an organization recognized by the Texas Private School Accreditation Commission or TEA.

"Child-care facility" has the meaning assigned by Human Resources Code 42.002.

"Organization providing out-of-school-time care" includes a faith-based organization, a before-school or after-school program, a summer camp, a Texas 4-H or other agricultural program, and a youth sports organization.

From money available for the purpose, a district may make available at no cost school safety training courses, including active shooter training courses, approved under Education Code 25.0815 [see EB] and determined to be appropriate by the district's school safety and security committee, to employees of accredited private schools located in the district or child-care facilities or other organizations providing out-of-school-time care to children younger than 18 years of age who reside in the district.

Education Code 37.119

Prohibited Coronavirus Preventative Measures

"COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

A district may not implement, order, or otherwise impose a mandate requiring:

1. A person to wear a face mask or other face covering to prevent the spread of COVID-19;
2. A person to be vaccinated against COVID-19; or
3. The closure of a public school to prevent the spread of COVID-19.

Health and Safety Code 81C.001-.004

Safety and Security Audit

At least once every three years, each district shall conduct a safety and security audit of the district's facilities that includes a security review [see CSA] for each district facility. A district, or a person included in the registry of persons providing school safety or security consulting services established by the Texas School Safety Center (TxSSC) who is engaged by the district to conduct a safety and security audit, shall follow safety and security audit procedures developed by the TxSSC in coordination with the commissioner of education.

A district must confirm that a person is included in the registry before the district may engage the person to provide school safety or security consulting services to the district.

In a district's safety and security audit, the district must certify that the district used the funds provided through the school safety allotment only for the purposes provided by Education Code 48.160.

A district shall report the results of the safety and security audit to the board and, in the manner required by the TxSSC, to the TxSSC. The district must maintain a copy of the report signed by the board and the superintendent.

Education Code 37.108(b), (b-1), (c), 37.2091(b-1)

In addition to a review of a district's multihazard emergency operations plan under Education Code 37.2071 [see CKC], the TxSSC may require a district to submit its plan for immediate review if the district's audit results indicate that the district is not complying with applicable standards. *Education Code 37.207(c)*

Failure to Report Audit Results

If a district fails to report the results of its audit, the TxSSC shall provide the district with written notice that the district has failed to report its audit results and must immediately report the results to the center.

If three months after the date of the initial notification the district has still not reported the results of its audit to the TxSSC, the TxSSC shall notify the Texas Education Agency (TEA) and the district of the district's requirement to conduct a public hearing under Education Code 37.1081. [See CKC]

Education Code 37.207(d)-(e)

Disclosure

Except as provided by Education Code 37.108(c-2) [see CKC], any document or information collected, developed, or produced during a safety and security audit is not subject to disclosure under Government Code Chapter 552 (Public Information Act). *Education Code 37.108(c-1)*

TEA Monitoring of Safety and Security Requirements

TEA shall monitor the implementation and operation of requirements related to school district safety and security, including school district multihazard emergency operations plans [see CKC], safety and security audits [see above], security reviews of district facilities [see CSA], and the response and use of emergency operations procedures by a district during an event requiring an emergency response.

Office of School Safety and Security

TEA shall establish an office of school safety and security to coordinate monitoring and, in coordination with the TxSSC and relevant local law enforcement agencies, provide technical assistance to school districts to support the implementation and operation of safety and security requirements.

Vulnerability Assessments

As part of the technical assistance, TEA shall conduct a detailed vulnerability assessment of each school district on a random basis once every four years. Any documentation requested by TEA for a vulnerability assessment must be uploaded to Sentinel [see below at Reporting Through Sentinel].

On completion of a vulnerability assessment TEA shall provide to the superintendent and school safety and security committee [see CK] for the applicable school district a report on the results of the assessment that includes recommendations and required corrective actions to address any deficiencies in campus security identified by the agency.

District Information and Records

Each school district shall submit information requested by TEA in TEA's efforts to monitor the implementation and operation of school district safety and security requirements, including notice of an event requiring a district's emergency response including the discovery of a firearm on a campus and information regarding the district's response and use of emergency operations procedures during such an event [see below at Reporting Through Sentinel].

TEA may review school district records as necessary to ensure compliance with Education Code Subchapter D (Protection of Building and Grounds) and Subchapter G (Texas School Safety Center).

Any document or information collected, identified, developed, or produced relating to the monitoring of school district safety and security requirements is confidential under Government Code 418.177 and 418.181 (Texas Disaster Act), and not subject to disclosure under Government Code Chapter 552.

Education Code 37.1083; 19 TAC 103.1213(a), (e)(2)(B)

Reporting Through Sentinel

Sentinel is TEA's formal school safety system designed to collect, process, store, and distribute school safety and security information. Sentinel serves as a repository for all safety and security-related data submitted to TEA. Each school district shall report information to TEA through Sentinel, including:

1. On or before June 30th of each year, a district shall input its upcoming school year calendar into Sentinel. Any changes to the school year calendar shall be updated in Sentinel within three business days after approval by district leadership.
2. On or before June 30th of each year, a district must verify that all district facilities listed in Sentinel reflect the correct address and campus emergency contact information.
3. If a district closes for a localized emergency, closure information must be immediately recorded in Sentinel.
4. School districts shall submit information related to events requiring an emergency response, including the discovery of a firearm on a campus [see above] in the Sentinel portal. This is inclusive of notifications regarding a bomb threat or terroristic threat [see CKC]. Submission of information in the Sentinel portal does not substitute the requirement for local law enforcement notification of certain activities [see GRAA].

[For additional requirements for reporting through Sentinel, see BJB for reporting a superintendent change, CKC for TxSSC uploading of multihazard emergency operations plans, FDA for transfer of threat assessments between districts, and FFB for application to behavioral threat assessments.]

19 TAC 103.1213(a), (b)(3), (c), (e)(3)(A)-(D)

Intruder Detection Audits

TEA's office of school safety and security shall establish a school safety review team in each region served by a regional education service center, which shall annually conduct on-site general intruder detection audits of school district campuses in the team's region.

Notice to Superintendent

In conducting an intruder detection audit, a safety review team must notify the superintendent of the district in which the campus being audited is located not later than the seventh day before the date of a scheduled audit.

Documentation

Any documentation requested by TEA for an intruder detection audit must be uploaded to Sentinel [see above at Reporting Through Sentinel].

Report

On completion of the audit, a safety review team must provide to the superintendent and school safety and security committee for the school district in which the campus is located a report on the results of the audit that includes recommendations and required corrective actions to address any deficiencies in campus security identified by the team.

A report produced by a safety review team is confidential and not subject to disclosure under Government Code Chapter 552.

Education Code 37.1084; 19 TAC 103.1213(e)(4)(B)

Assignment of Conservator for Noncompliance

The commissioner may assign a conservator under Education Code Chapter 39A if a school district fails to:

1. Submit to any required monitoring, assessment, or audit under Education Code 37.1083 or 37.1084 [see above];
2. Comply with applicable safety and security requirements; or
3. Address in a reasonable time period, as determined by commissioner rule, issues raised by TEA's monitoring, assessment, or audit of the district under Education Code 37.1083 or 37.1084.

A conservator may exercise the powers and duties of a conservator under Education Code 39A.003 [see AIC] only to correct a failure identified above. TEA may not assign a conservator for a district's failure to comply with Education Code 37.0814 (Armed Security Officer Required) or a good cause exception claimed under that section. [See CKE]

Education Code 37.1085

Notice of Bomb Threat or Terroristic Threat

A district that receives a bomb threat or terroristic threat relating to a campus or other district facility at which students are present shall provide notification of the threat as soon as possible to the parent or guardian of or other person standing in parental relation to each student who is assigned to the campus or who regularly uses the facility, as applicable. *Education Code 37.113*

Notice Regarding Violent Activity

The Texas Education Agency (TEA) shall develop model standards for providing notice regarding violent activity that has occurred or is being investigated at a district campus or other district facility or at a district-sponsored activity to parents, guardians, and other persons standing in parental relation to students who are assigned to the campus, regularly use the facility, or are attending the activity, as applicable. A district shall adopt a policy for providing this notice in a manner that meets TEA standards. *Education Code 37.1131*

Emergency Response Map and Walk-Through

A district shall provide to the Department of Public Safety (DPS) and all appropriate local law enforcement agencies and emergency first responders:

1. An accurate map of each district campus and school building that is developed and documented in accordance with the standards described by Education Code 37.351 related to developing site and floor plans, access control, and exterior door numbering; and

2. An opportunity to conduct a walk-through of each district campus and school building using the map.

A district shall also provide the map described in item 1 to each emergency services district located in whole or in part within the district.

Education Code 37.117

Emergency Operations Plan

Each district shall adopt and implement a multihazard emergency operations plan for use in the district's facilities. The plan must address prevention, mitigation, preparedness, response, reunification, and recovery, including the prompt recovery of services provided by the district, as defined by the Texas School Safety Center (TxSSC) in conjunction with the governor's office of homeland security and the commissioner. The plan must provide for:

1. Training in responding to an emergency for district employees, including substitute teachers;

2. Measures to ensure district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone, or another electronic communication device allowing for immediate contact with district emergency

services or emergency services agencies, law enforcement agencies, health departments, and fire departments;

3. Measures to ensure district communications technology and infrastructure are adequate to allow for communication during an emergency, including measures to ensure the use of standardized response protocol terminology, developed in coordination with the TxSSC, to facilitate communication between law enforcement, emergency services, district employees, and the public;

4. Mandatory school drills and exercises, including drills required under Education Code 37.114 (emergency evacuations), to prepare district students and employees for responding to an emergency [see CKB];

5. Measures to ensure coordination with the Texas Department of State Health Services (TDSHS) and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency;

6. The implementation of a required safety and security audit [see CKA]; and

7. Any other requirements established by the TxSSC in consultation with TEA and relevant local law enforcement agencies. The TxSSC shall provide to the superintendent of each district notice of the requirements applicable to the district.

Education Code 37.108(a), (a-1)

A district shall include in its multihazard emergency operations plan:

1. A chain of command that designates the individual responsible for making final decisions during a disaster or emergency situation and identifies other individuals responsible for making those decisions if the designated person is unavailable;

2. Provisions that address physical and psychological safety for responding to a natural disaster, active shooter, and any other dangerous scenario identified for purposes of these provisions by TEA or TxSSC;

3. Provisions for ensuring the safety of students in portable buildings;

4. Provisions for ensuring that students and district personnel with disabilities are provided equal access to safety during a disaster or emergency situation based on the recommendations and guidelines established by the commissioner [see

Recommendations and Guidelines for Individuals with Disabilities or Impairments, below];

5. Provisions for providing immediate notification to parents, guardians, and other persons standing in parental relation in circumstances involving a significant threat to the health or safety of students, including identification of the individual with responsibility for overseeing the notification;

6. Provisions for supporting the psychological safety of students, district personnel, and the community during the response and recovery phase following a disaster or emergency situation that:

    a. Are aligned with best practice-based programs and research-based practices recommended under Education Code 38.351;

    b. Include strategies for ensuring any required professional development training for suicide prevention and grief-informed and trauma-informed care is provided to appropriate school personnel;

    c. Include training on integrating psychological safety and suicide prevention strategies into the district's plan, such as psychological first aid for schools training, from an approved list of recommended training established by the commissioner and TxSSC for:

        (1) Members of the district's school safety and security committee [see CK];

        (2) District school counselors and mental health professionals; and

        (3) Educators and other district personnel as determined by the district;

    d. Include strategies and procedures for integrating and supporting physical and psychological safety that align with the provisions described by item 2, above; and

    e. Implement trauma-informed policies;

7. A policy for providing a substitute teacher access to school campus buildings and materials necessary for the substitute teacher to carry out the duties of a district employee during an emergency or a mandatory emergency drill;

8. Provisions, as determined by TEA, for ensuring the safety of students, staff, and spectators during extracurricular activities sponsored or sanctioned by the district;

9. The name of each individual on the district's school safety and security committee and the date of each committee meeting during the preceding year [see CK]; and

10. Certification that the district is in compliance with Education Code 37.117 [see Emergency Response Map, above].

Education Code 37.108(f)

Recommendations and Guidelines for Individuals with Disabilities or Impairments

The commissioner by rule shall establish:

1. Recommendations regarding accommodations for a student with an individualized education program (IEP) or a plan created under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794) (Section 504) during a mandatory school drill [see CKB]; and

2. Guidelines for documentation of accommodations for a student with an IEP or Section 504 plan in the provisions in a district's multihazard emergency operations plan to ensure the safety of students and district personnel with disabilities or impairments during a mandatory school drill or disaster or emergency situation, required communications between campus administrators and staff regarding the accommodations, and required communications between campus administrators and the district's school safety and security committee regarding students or district personnel with disabilities or impairments for purposes of providing recommendations for updating the district's multihazard emergency operations plan. [For information regarding a school safety and security committee's role in implementing this requirement, see CK.]

A district must follow the guidelines described by item 2 in adopting and implementing the district's multihazard emergency operations plan.

Education Code 37.1086

Active Shooter Emergency

A district shall include in its multihazard emergency operations plan a policy for responding to an active shooter emergency. The district may use any available community resources in developing the policy. *Education Code 37.108(g)*

Train Derailment

A district shall include in its multihazard emergency operations plan a policy for responding to a train derailment near a district school. A district is only required to adopt the policy if a district facility is lo-

cated within 1,000 yards of a railroad track, as measured from any point on the school's real property boundary line. A district may use any available community resources in developing the policy. *Education Code 37.108(d)*

Polling Place Security

A district shall include in its multihazard emergency operations plan a policy for district property selected for use as a polling place under Election Code 43.031. In developing the policy, the board may consult with the local law enforcement agency with jurisdiction over the district property selected as a polling place regarding reasonable security accommodations that may be made to the property. This requirement may not be interpreted to require the board to obtain or contract for the presence of law enforcement or security personnel for the purpose of securing a polling place located on district property. Failure to comply with this subsection does not affect the requirement of the board to make a school facility available for use as a polling place under Election Code 43.031. *Education Code 37.108(e)* [See GKD]

Disclosure

A document relating to a district's multihazard emergency operations plan is subject to disclosure if the document enables a person to:

1. Verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including TDSHS, local emergency services agencies, law enforcement agencies, health departments, and fire departments;
2. Verify that the district's plan was reviewed within the last 12 months and determine the specific review dates;
3. Verify that the plan addresses the five phases of emergency management listed above at Emergency Operations Plan;
4. Verify that district employees have been trained to respond to an emergency and determine the types of training, the number of employees trained, and the person conducting the training;
5. Verify that each campus in the district has conducted mandatory emergency drills and exercises in accordance with the plan and determine the frequency of the drills;
6. Verify that the district has established a plan for responding to a train derailment if required [see Train Derailment, above];
7. Verify that the district has completed a safety and security audit and determine the date the audit was conducted, the per-

son conducting the audit, and the date the district presented the results of the audit to the board [see CKA];

8. Verify that the district has addressed any recommendations by the board for improvement of the plan and determine the district's progress within the last 12 months; and

9. Verify that the district has established a visitor policy and identify the provisions governing access to a district building or other district property.

Education Code 37.108(c-2)

[See GRC for emergency management training requirements and response to requests from other governmental entities for mutual aid.]

Plan Review

A district shall submit its multihazard emergency operations plan to the TxSSC not later than the 30th day after the date the TxSSC requests the submission and in accordance with the review cycle developed under Education Code 37.2071(a).

Any document or information collected, developed, or produced during the review and verification of multihazard emergency operations plans is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

Upon completed review of a district's multihazard emergency operations plan, the TxSSC may upload a copy of that plan, including all required appendices, to the Sentinel portal. [See CKA] *19 TAC 103.1213(e)(3)(E)*

Failure to Submit Plan

If a district fails to submit its multihazard emergency operations plan to the TxSSC for review following a notification by the TxSSC that the district has failed to submit the district's plan, the TxSSC shall provide the district with written notice stating that the district must hold a public hearing as outlined at Public Hearing on Noncompliance, below. The notice must state that the commissioner is authorized to appoint a conservator under Education Code 37.1082.

Notice of Plan Deficiencies

The TxSSC shall review each district's multihazard emergency operations plan and verify the plan meets the requirements or provide the district with written notice describing the plan's deficiencies, including specific recommendations to correct the deficiencies, and stating that the district must correct the deficiencies in its plan and resubmit the revised plan to the TxSSC.

The TxSSC may approve a district multihazard emergency operations plan that has deficiencies if the district submits a revised plan that the center determines will correct the deficiencies.

Failure to Correct Deficiencies

If one month after the date of initial notification of a plan's deficiencies outlined above a district has not corrected the plan deficiencies, the TxSSC shall provide written notice to the district and TEA that the district has not complied with the requirements and must comply immediately.

If a district still has not corrected the plan deficiencies three months after the date of initial notification, the TxSSC shall provide written notice to the district stating that the district must hold a public hearing as outlined at Public Hearing on Noncompliance, below.

Education Code 37.2071

Public Hearing on Noncompliance

If the board receives notice of noncompliance under Education Code 37.207(e) [see CKA], 37.2071(d) [see Failure to Submit Plan, above] or 37.2071(g) [see Failure to Correct Deficiencies, above], the board shall hold a public hearing to notify the public of:

1. The district's failure to submit or correct deficiencies in a multihazard emergency operations plan or report the results of a safety and security audit to the TxSSC as required by law;
2. The dates during which the district has not been in compliance; and
3. The names of each member of the board and the superintendent serving in that capacity during the dates the district was not in compliance. The district shall provide this information in writing to each person at the hearing.

The board shall give members of the public a reasonable opportunity to appear before the board and to speak on the issue of the district's failure to submit or correct deficiencies in a multihazard emergency operations plan or report the results of a safety and security audit during a hearing held under this provision. A district required to hold a public hearing shall provide written confirmation to the TxSSC that the district held the hearing.

Education Code 37.1081

Safe Firearm Storage

The TxSSC, in collaboration with DPS, shall provide to each district information and other resources regarding the safe storage of firearms for distribution by the district including information on the offense of making a firearm accessible to a child under Penal Code 46.13 and ways in which parents and guardians can effectively prevent children from accessing firearms.

A district shall provide the information and other resources to the parent or guardian of each student enrolled in the district or school at least three times each school year.

Education Code 37.222

Confidential Information under the Texas Disaster Act

Information is confidential if the information is collected, assembled, or maintained by or for a district for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity or a hostile act by a foreign adversary of the United States and:

Emergency Response Provider Information

1. Relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a firefighting agency, or an emergency services agency;
2. Relates to a tactical plan of the provider; or
3. Consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Gov't Code 418.176

Risk or Vulnerability Assessment

Information is confidential if the information:

1. Is collected, assembled, or maintained by or for a district for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity or a hostile act by a foreign adversary of the United States; and
2. Relates to an assessment by or for a district, or an assessment that is maintained by a district, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Gov't Code 418.177

Information, other than financial information, in the possession of a district is confidential if the information:

1. Is part of a report to an agency of the United States;
2. Relates to an act of terrorism or related criminal activity; and
3. Is specifically required to be kept confidential:
    a. Under the Public Information Act, Government Code 552.101, because of a federal statute or regulation;
    b. To participate in a state-federal information sharing agreement; or

c. To obtain federal funding.

Security Systems

Financial information in the possession of a district that relates to the expenditure of funds by a district for a security system is public information that is not excepted from required disclosure under the Public Information Act. [See GBA]

Information, including access codes and passwords, in the possession of a district that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity or a hostile act by a foreign adversary of the United States is confidential.

Gov't Code 418.182

Disaster Disclosure Exception

At any time during a state of disaster, the superintendent may voluntarily disclose or otherwise make available all or part of the information that is confidential under Government Code 418.175-.182 to another person or another entity if the superintendent believes that the other person or entity has a legitimate need for the information. The disclosure or making available of confidential information under this provision does not waive or affect the confidentiality of the information. *Gov't Code 418.183(b), (e)*

Traumatic Injury Response Protocol

Each district shall develop and annually make available a protocol for employees and volunteers to follow in the event of a traumatic injury. The protocol must:

1. Provide for a district to maintain and make available to employees and volunteers bleeding control stations, as described below, for use in the event of a traumatic injury involving blood loss;
2. Ensure that bleeding control stations are stored in easily accessible areas of the campus that are selected by the district's school safety and security committee;
3. Require that TEA-approved training on the use of a bleeding control station in the event of an injury to another person be provided to:
    a. Each district peace officer commissioned under Education Code 37.081 or school security personnel employed under that section who provides security services at the campus;
    b. Each school resource officer who provides law enforcement at the campus; and
    c. All other district personnel who may be reasonably expected to use a bleeding control station; and
4. Require the district to annually offer instruction on the use of a bleeding control station from a school resource officer or other appropriate district personnel who has received the training described above to students enrolled at the campus in grade seven or higher.

Bleeding Control Stations

Location

A district’s school safety and security committee may select, as easily accessible areas of the campus at which bleeding control stations may be stored, areas of the campus where automated external defibrillators are stored.

Contents

A bleeding control station must contain all of the following required supplies in quantities determined appropriate by the superintendent:

1. Tourniquets approved for use in battlefield trauma care by the armed forces of the United States;
2. Chest seals;
3. Compression bandages;
4. Bleeding control bandages;

5. Space emergency blankets;
6. Latex-free gloves;
7. Markers;
8. Scissors; and
9. Instructional documents developed by the American College of Surgeons or the United States Department of Homeland Security detailing methods to prevent blood loss following a traumatic event.

A district may also include in a bleeding control station any medical material or equipment that:

1. May be readily stored in a bleeding control station;
2. May be used to adequately treat an injury involving traumatic blood loss; and
3. Is approved by local law enforcement or emergency medical services personnel.

Immunity

The good faith use of a bleeding control station by a district employee to control the bleeding of an injured person is incident to or within the scope of the duties of the employee's position of employment and involves the exercise of judgment or discretion on the part of the employee for purposes of Education Code 22.0511, and a district and district employees are immune from civil liability, as provided by that section, from damages or injuries resulting from that good faith use of a bleeding control station. A district volunteer is immune from civil liability from damages or injuries resulting from the good faith use of a bleeding control station to the same extent as a professional employee of the district or school, as provided by Education Code 22.053.

Education Code 38.030(a)–(e), (i)

Automated External Defibrillators

Availability

Campus

Each school district shall make available at each campus in the district at least one automated external defibrillator (AED), as defined by Health and Safety Code 779.001. A campus defibrillator must be readily available during any University Interscholastic League (UIL) athletic competition held on the campus. In determining the location at which to store a campus defibrillator, the principal shall consider the primary location on campus where students engage in athletic activities.

Athletic Practice

To the extent practicable, each school district, in cooperation with the UIL, shall make reasonable efforts to ensure that a defibrillator is available at each UIL athletic practice held at a district campus. If

a school district is not able to make a defibrillator available in such a manner, the district shall determine the extent to which a defibrillator must be available at each UIL athletic practice held at a district campus. The determination must be based, in addition to any other appropriate considerations, on relevant medical information.

Athletic Competition

Each school district, in cooperation with the UIL, shall determine the extent to which a defibrillator must be available at each UIL athletic competition held at a location other than a district campus. The determination must be based, in addition to any other appropriate considerations, on relevant medical information and whether emergency services personnel are present at the athletic competition under a contract with the school district.

Trained Staff

Each school district shall ensure the presence at each location at which a defibrillator is required above of at least one campus or district employee trained in the proper use of the defibrillator at any time a substantial number of district students are present at the location.

Use and Maintenance

A school district shall ensure that an AED is used and maintained in accordance with standards established under Health and Safety Code Chapter 779.

Education Code 38.017

Instruction

A district shall annually make available to district employees and volunteers instruction in the principles and techniques of cardiopulmonary resuscitation and the use of an AED, as defined by Health and Safety Code 779.001.

Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other school employee specified by the commissioner and each student who serves as an athletic trainer must participate and must receive and maintain certification in cardiopulmonary resuscitation and the use of an AED from the American Heart Association, the American Red Cross, or a similar nationally recognized association.

Education Code 22.902

[See CH for information regarding purchase and lease of AEDs.]

Inspection

Each fire safety inspection of a public school required by a state or local law, rule, regulation, or ordinance must include an examination of each AED on the school campus to determine whether the defibrillator is fully functional, which must include verifying that that defibrillator's pads and battery have not expired and that the defibrillator’s status indicator light indicates that the device is ready for

use. A representative of the school campus shall present each AED for inspection.

Gov't Code 419.909(b-1)

[See CLB for information regarding retention and storage of the fire safety inspection report.]

Cardiac Emergency Response Plan

Each school district shall develop and implement a cardiac emergency response plan that establishes safety procedures for a district or school employee or other appropriate personnel to follow in responding to a medical emergency involving cardiac arrest on district grounds. A district shall implement the cardiac emergency response plan by the first day of the 2027-28 school year.

Plan Development

In developing the plan, a school district shall work directly with local emergency services providers to integrate the plan with the providers' protocols and incorporate evidence-based practices of a nationally recognized, guidelines-based organization focused on emergency cardiovascular care.

Minimum Requirements

The plan must include at a minimum:

1. The establishment of a cardiac emergency response team;
2. Procedures for activating the cardiac emergency response team in response to a medical emergency involving cardiac arrest;
3. The dissemination of the plan throughout each district campus;
4. Ongoing training in first aid, cardiopulmonary resuscitation, and the use of AEDs [see above at Automated External Defibrillators], using evidence-based guidelines, for appropriate district employees, including school coaches, school nurses, and athletic trainers [see DMA for required staff development regarding AEDs];
5. Annual practice drills in responding to a medical emergency involving cardiac arrest; and
6. Annual review, evaluation, and, if necessary, modification of the plan.

Education Code 38.018

Airway Clearance Devices

Each school district shall make available at each district campus at least one airway clearance device appropriate for use on the majority of students enrolled at the campus. A district is only required to comply with this requirement if the district may obtain an airway clearance device for the campus through:

1. Donation of the device in the original packaging; or
2. Purchase or lease of the device using money appropriated or donated to the district for that purpose.

Location	In determining the location at which to store the device, the principal of the campus shall consider the primary location on campus where students consume food.
Trained Staff	A school district shall ensure the presence at each location at which a required airway clearance is stored of at least one campus or district employee trained in the proper use of the device at any time a substantial number of students are present at the location.
Storage and Use	A school district shall ensure that each airway clearance device is stored and used in accordance with the manufacturer's specifications and any applicable law.
Immunity	The above requirements do not waive any immunity from liability of a school district or the district's officers or employees, create any liability for or a cause of action against a school district or the district's officers or employees, or waive any immunity from liability under Civil Practice and Remedies Code 74.151.
Gifts, Grants, and Donations	A school district may solicit and accept gifts, grants, or other donations to obtain airway clearance devices.

Education Code 38.0171

Armed Security Officer Required

The board shall determine the appropriate number of armed security officers for each district campus. The board must ensure that at least one armed security officer is present during regular school hours at each district campus.

For this purpose, a security officer must be:

1. A school district peace officer;
2. A school resource officer;
3. A commissioned peace officer employed as security personnel under Education Code 37.081;
4. A reserve deputy sheriff appointed under Local Government Code 85.004 who is a peace officer as described by Code of Criminal Procedure 2A.001;
5. A reserve police officer appointed under Education Code 37.0816 who is a peace officer as described by Code of Criminal Procedure 2A.001 [see CKEA]; or
6. An honorably retired peace officer, as that term is defined by Government Code 614.121, who has:
    a. Kept their commission as a peace officer in active status; and
    b. Fulfilled all applicable requirements under Occupations Code 1701.351 (continuing education), 1701.3525 (active shooter response training), and 1701.357 (weapons proficiency).

Good Cause Exception

If the board is unable to comply with this requirement, the board may claim a good cause exception if the district's noncompliance is due to the availability of funding or personnel who qualify to serve as a security officer.

Expiration

A good cause exception claimed by the board expires on the first anniversary of the date the exception is claimed.

Renewal

On the expiration of the exception, the board must reevaluate whether the board is able to comply with this requirement and, if not, renew the claim for an exception and the alternative standard.

Alternative Standard

A board that claims a good cause exception must develop an alternative standard with which the district is able to comply, which may include providing a person to act as a security officer who is:

1. A school marshal; or

2. A school district employee or a person with whom the district contracts who carries a handgun on school premises in accordance with written regulations or written authorization of the district under Penal Code 46.03(a)(1)(A) and who either:

   a. Has completed school safety training provided by a qualified handgun instructor certified in school safety under Government Code 411.1901; or

   b. Not later than the 90th day after the date on which the employee or person begins duties as a security officer, completes training deemed appropriate by the district, in consultation with the district's police department, or, if the district does not have a police department, a local law enforcement agency, in:

      (1) Active shooter response, which must be provided by an instructor certified by the Advanced Law Enforcement Rapid Response Training Center at Texas State University — San Marcos;

      (2) School safety and emergency management;

      (3) Crisis intervention;

      (4) Incident command;

      (5) First aid administration;

      (6) Mental health; and

      (7) Qualifications relating to the carrying or use of a firearm.

Documentation

The board must develop and maintain documentation of the district's implementation of and compliance with this requirement, including documentation related to a good cause exception and shall, if requested by the Texas Education Agency (TEA), provide that documentation in the manner prescribed by TEA.

Education Code 37.0814

School District Peace Officers, School Resource Officers, and Security Personnel

To carry out Education Code Chapter 37, Subchapter C (Law and Order), the board may:

1. Employ or contract with security personnel, including contracting with a licensed security services contractor for the provision of a commissioned security officer who has completed the Level II or III training course required by the Department of Public Safety;

2. Enter into a memorandum of understanding with a local law enforcement agency or a county or municipality that is the employing political subdivision of commissioned peace officers for the provision of school resource officers; and

3. Commission peace officers.

Jurisdiction

The jurisdiction of a peace officer, a school resource officer, or security personnel shall be determined by the board and may include all territory in the boundaries of the district and all property outside the boundaries of the district that is owned, leased, or rented by or otherwise under the control of the district and the board that employ or contract with, as applicable, the peace officer or security personnel or that enter into a memorandum of understanding for the provision of a school resource officer.

Education Code 37.081(a), (a-1); 37 TAC 35.141

Duties

The board shall determine the law enforcement duties of peace officers, school resource officers, and security personnel. The duties must be included in:

1. The district improvement plan under Education Code 11.252 [see BQ];

2. The student code of conduct adopted under Education Code 37.001 [see FO];

3. Any memorandum of understanding providing for a school resource officer; and

4. Any other campus or district document describing the role of peace officers, school resource officers, or security personnel in the district.

A district peace officer, a school resource officer, and security personnel shall perform law enforcement duties for the school district that must include protecting the safety and welfare of any person in the jurisdiction of the peace officer, resource officer, or security personnel; and the property of the school district.

In determining the law enforcement duties, the board shall coordinate with district campus behavior coordinators and other district employees to ensure that district peace officers, school resource officers, and security personnel are tasked only with duties related to law enforcement intervention and not tasked with behavioral or administrative duties better addressed by other district employees.

Education Code 37.081(d), (d-1), (d-4)

Prohibited Duties

A district may not assign or require as duties of a district peace officer, a school resource officer, or security personnel:

1. Routine student discipline or school administrative tasks; or
2. Contact with students unrelated to the law enforcement duties of the peace officer, resource officer, or security personnel.

This provision does not prohibit a district peace officer, a school resource officer, or security personnel from informal contact with a student unrelated to:

1. The assigned duties of the officer or security personnel; or
2. An incident involving student behavior or law enforcement.

Education Code 37.081(d-2), (d-3)

Refusal or Removal from District Property

A school resource officer or district peace officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. *Education Code 37.105(a); 19 TAC 103.1207* [See GKA]

Active Shooter Response Training

A district peace officer or school resource officer shall complete an active shooter response training program approved by the Texas Commission on Law Enforcement (TCOLE) at least once in each four-year period.

A district that commissions a school district peace officer or at which a school resource officer provides law enforcement shall adopt a policy requiring the officer to complete the education and training program required by Occupations Code 1701.263.

A district may not contract for the provision of active shooter response training unless the training provider is certified under Occupations Code 1701.2515 to provide the training.

Education Code 37.0812

School-Based Law Enforcement Proficiency

School district peace officers or school resource officers providing law enforcement services at a district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district. *37 TAC 218.3(d)(5); Occupations Code 1701.263(b)*

Officer Providing Volunteer Security Services

A peace officer providing volunteer security services on premises where an event sponsored or sanctioned by a public primary or secondary school is taking place may:

1. With the consent of the head of the employing or appointing law enforcement agency, wear the uniform of the agency; or

2. Wear another uniform or badge that gives the person the appearance of being a peace officer.

Occupations Code 1702.333(d)

Immunity from Liability

"Retired peace officer" has the meaning assigned by Occupations Code 1701.3161.

"Security personnel" includes:

1. A school district peace officer;
2. A school marshal;
3. A school resource officer; and
4. A retired peace officer who has been hired by a district to provide security services or volunteers to provide security services to the district.

A district is immune from liability for any damages resulting from any reasonable action taken by security personnel to maintain the safety of the campus, including action relating to possession or use of a firearm.

A district is immune from liability as provided above for any damages resulting from any reasonable action taken by a district employee who has written permission from the board to carry a firearm on campus.

Any security personnel employed by a district is immune from liability for any damages resulting from any reasonable action taken by the security personnel to maintain the safety of the campus, including action relating to possession or use of a firearm.

The statutory immunity provided by these provisions is in addition to and does not preempt the common law doctrine of official and governmental immunity. To the extent that another statute provides greater immunity to a district than these provisions, that statute prevails.

Education Code 37.087

Notice of Exposure to Communicable Disease

A district that employs emergency medical service employees, paramedics, firefighters, law enforcement officers or correctional officers must post the required notice regarding work-related exposure to communicable disease in its workplace to inform employees about Health and Safety Code requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to a reportable communicable disease. *28 TAC 110.108*

Authorized Handguns

Under Education Code 11.151(b), a board may promulgate written regulations and authorization as provided by Penal Code 46.03(a)(1) (exception to places where weapons are prohibited). *Atty. Gen. Op. GA-1051 (2014)*

Role of Persons Carrying a Firearm

A person permitted to carry a firearm on the campus of a school district may not perform the routine law enforcement duties of a peace officer, including making arrests, unless the duty is performed in response to an emergency that poses a threat of death or serious bodily injury to a student, school district employee, or other individual at the district campus.

This prohibition does not apply to a commissioned peace officer who is assigned law enforcement duties that are included in campus and district documents describing the role of peace officers in the district as required by Education Code 37.081(d) [see Duties, above].

Education Code 37.089

Note: For general provisions applicable to district security personnel, including district peace officers, see CKE.

For information on mental health leave, quarantine leave, and line of duty leave for peace officers, see DEC.

Powers and Duties

Code of Criminal Procedure

Any peace officer commissioned by the board must meet all minimum standards for peace officers established by the Texas Commission on Law Enforcement (TCOLE). *Education Code 37.081(h)*

Officers commissioned by a board are peace officers. *Code of Criminal Procedure 2A.001(8)*

It is the duty of every peace officer to preserve the peace within the officer's jurisdiction. To effect this purpose, the officer shall use all lawful means. *Code of Criminal Procedure 2A.051(1)*

The peace officer shall perform the duties listed in Code of Criminal Procedure 2A.051.

Determined by the Board

A district peace officer shall perform law enforcement duties for the district as determined by the board. *Education Code 37.081(d), (d-1)* [See CKE(LEGAL)]

The board may authorize any officer commissioned by the board to enforce rules adopted by the board. Education Code Chapter 37, Subchapter D (protection of buildings and grounds) is not intended to restrict the authority of each district to adopt and enforce appropriate rules for the orderly conduct of the district in carrying out its purposes and objectives or the right of separate jurisdiction relating to the conduct of its students and personnel. *Education Code 37.103*

In a peace officer's jurisdiction, a peace officer commissioned by the board:

1. Has the powers, privileges, and immunities of peace officers;
2. May enforce all laws, including municipal ordinances, county ordinances, and state laws;
3. May take a child into custody in accordance with Family Code Chapter 52 [see GRA] or Code of Criminal Procedure 45A.453; and
4. May dispose of cases in accordance with Family Code 52.03 or 52.031.

Education Code 37.081(b); Family Code 52.01(a)(3)

The board shall determine the scope of the on-duty and off-duty law enforcement activities of district peace officers. A district must authorize in writing any off-duty law enforcement activities performed by a district peace officer.

A district peace officer may provide assistance to another law enforcement agency. A district may contract with a political subdivision for the jurisdiction of a district peace officer to include all territory in the jurisdiction of the political subdivision.

Education Code 37.081(c), (e)

Public Information Officer for Emergency Communications

The district police department shall employ or appoint a person whose duties include communicating with the public during a disaster regarding the disaster as the department's public information officer. The public information officer must obtain certification in emergency communications from the Texas Division of Emergency Management and complete continuing education on emergency communications under Government Code Chapter 418, Subchapter K. [For more information about the training required for public information officers, see CK.] *Gov't Code 411.3735(a), (b)*

Chief of Police

The chief of police of a district police department shall be accountable to the superintendent and shall report to the superintendent. District police officers shall be supervised by the district chief of police or the chief's designee and shall be licensed by TCOLE. *Education Code 37.081(f)*

Reserve Police Officers

The board may authorize the chief of police to appoint reserve police officers for the district. The board may limit the number of reserve police officers the chief may appoint.

Chief of Police Discretion

A reserve police officer serves at the discretion of the chief of police and may be called into service at any time that the chief considers it necessary to have additional officers to preserve the peace and enforce the law.

Authority

The chief of police may authorize a reserve police officer who holds a permanent peace officer license issued under Occupations Code 1701 (peace officers) to carry a weapon or act as a peace officer at all times or may limit the authority of the reserve police officer to carry a weapon or act as a peace officer to only those times during which the reserve police officer is engaged in the actual discharge of official duties.

A reserve police officer who does not hold a permanent peace officer license issued under Occupations Code 1701 (peace officers) may act as a peace officer only if the officer has fulfilled all applicable continuing education and training requirements under Occupa-

tions Code 1701.351 and 1701.3525 and during the actual discharge of official duties.

Rights, Privileges, and Duties

A reserve police officer on active duty at the call of the chief of police and actively engaged in assigned duties has the same rights, privileges, and duties as any other peace officer of the state.

A reserve police officer is not exempt from Occupations Code 1702 (private security).

Ineligibility for Benefits

A reserve police officer is not eligible for participation in any program provided by TEA or the board that is normally considered a financial benefit of full-time employment or for any pension fund created by statute for the benefit of full-time paid peace officers.

Education Code 37.0816

Oath and Bond

A peace officer assigned to duty and commissioned by a board shall take and file the oath required of peace officers and shall execute and file a bond in the sum of $1,000, payable to the board, with two or more sureties, conditioned that the peace officer will fairly, impartially, and faithfully perform all the duties that may be required of the peace officer by law. *Education Code 37.081(h)*

Preemployment Procedures and Reporting Requirements

Before a law enforcement agency may hire a person licensed under Occupations Code 1701 (law enforcement officers), the agency must, on a form and in the manner prescribed by the TCOLE:

1. Obtain the person's written consent for the agency to review the information required to be reviewed under Occupations Code 1701.451;
2. Request from TCOLE and any other applicable person information required to be reviewed under Occupations Code 1701.451; and
3. Submit to TCOLE confirmation that the agency, to the best of the agency's ability before hiring the person:
    a. Contacted each entity or individual necessary to obtain the information required to be reviewed under Occupations Code 1701.451; and
    b. Except as provided below, obtained and reviewed as related to the person, as applicable, the information listed in Occupations Code 1701.451(a)(3)(B).

Confirmation Form

The head of a law enforcement agency or the agency head's designee shall review and sign each confirmation form required under Occupations Code 1701.451 before submission to TCOLE. The failure of an agency head or the agency head's designee to comply

with this subsection constitutes grounds for suspension of the agency head's license under Occupations Code 1701.501.

The confirmation form submitted to TCOLE is not confidential and is subject to disclosure under Government Code Chapter 552 (Public Information Act).

Exception

If an entity or individual contacted for information required to be reviewed under Occupations Code 1701.451 refused to provide the information or did not respond to the request for information, the confirmation submitted to TCOLE must document the manner of the request and the refusal or lack of response.

Duty to Provide Information

If a law enforcement agency receives from a law enforcement agency a request for information under Occupations Code 1701.451 and the person's consent on the forms and in the manner prescribed by TCOLE, the agency shall provide the information to the requesting agency.

Occupations Code 1701.451

Separation Report

When a person licensed by TCOLE separates from an agency, the agency shall, within 7 business days:

1. Submit a separation report (Form F5) to TCOLE; and
2. Provide a copy to the licensee in a manner prescribed by Occupations Code 1701.452 (Employment Termination Report).

37 TAC 217.7(b)

An agency must retain records kept under 37 Administrative Code 217.7 while the person is appointed and for a minimum of five years after the licensee's separation date with that agency. The records must be maintained under the control of the agency head or designee in a format readily accessible to TCOLE. *37 TAC 217.7(d)*

Memoranda of Understanding

A district police department and the law enforcement agencies with which it has overlapping jurisdiction shall enter into a memorandum of understanding that outlines reasonable communication and coordination efforts between the department and the agencies. *Education Code 37.081(g)*

Required Policies

Use of Force/Duty to Render Aid

Not later than the 180th day after the date TCOLE provides the model policies described by Occupations Code 1701.269(b), each law enforcement agency in this state shall adopt a policy on the topics described by that subsection. A law enforcement agency may adopt the model policies developed by TCOLE under that subsection. *Occupations Code 1701.270*

Medical and Psychological Exams	Each law enforcement agency in this state shall adopt the model policy described by Occupations Code 1701.167(a) or a substantively similar policy. A policy adopted by a law enforcement agency under that subsection must be submitted to TCOLE, and the commission shall maintain a copy of the policy. *Occupations Code 1701.167(b)*
Active Shooter Incident	A law enforcement agency must have an active shooter policy, including a detailed written policy based on current best practices for responding to an active shooter incident at a primary or secondary school facility and a recommendation for the frequency at which simulated emergency drills should be conducted, in accordance with minimum standards established by TCOLE. *Occupations Code 1701.163*
Access to Breaching Tool and Ballistic Shield	A law enforcement agency must make available to officers at least one breaching tool and one ballistic shield in accordance with minimum standards established by TCOLE. *Occupations Code 1701.163* [For requirement that district campuses possess breaching tools and ballistic shields, see CSA.]
Donation of Surplus Law Enforcement Equipment to a School District	If the Texas Facilities Commission determines that the state's efforts to secure its international border and combat transnational crime will sufficiently benefit from the donation of the surplus motor vehicles and other law enforcement equipment of the Department of Public Safety to a school district located in an economically disadvantaged area of this state, it may transfer the property to the district at a price or for other consideration agreed to by the commission and the district. A school district that receives surplus property may not sell the property before the second anniversary of the date the property is received and may not use the property for a purpose other than in the performance of law enforcement duties by peace officers, school resource officers, or security personnel as described by Education Code 37.081. *Gov't Code 2175.308*
Drones	"Drone" means an unmanned aircraft, watercraft, or ground vehicle or a robotic device that: 1. Is controlled remotely by a human operator; or 2. Operates autonomously through computer software or other programming. Each law enforcement agency that uses or intends to use a drone for law enforcement purposes shall:

1. Adopt a written policy regarding the agency's use of force by means of a drone, before the agency first uses a drone, and update the policy as necessary; and

2. Not later than January 1 of each even-numbered year, submit the policy to TCOLE in the manner prescribed by TCOLE.

Code of Criminal Procedure 2B.0253

[For additional information on unmanned aircraft systems, see GKA.]

Body-Worn Camera Programs

For the purpose of this provision, "body-worn camera" means a recording device that is capable of recording, or transmitting to be recorded remotely, video or audio; and worn on the person of a peace officer, which includes being attached to the officer's clothing or worn as glasses.

A law enforcement agency that operates a body-worn camera program shall adopt a policy for the use of body-worn cameras that must ensure that a body-worn camera is activated only for a law enforcement purpose and must include guidelines and provisions required by Occupations Code 2B.0106(b).

A policy may not require a peace officer to keep a body-worn camera activated for the entire period of the officer's shift.

A policy must require a peace officer who is equipped with a body-worn camera and actively participating in an investigation to keep the camera activated for the entirety of the officer's active participation in the investigation unless the camera has been deactivated in compliance with that policy.

Before a law enforcement agency may operate a body-worn camera program, the agency must provide training to peace officers who will wear the body-worn cameras and any other personnel who will come into contact with video and audio data obtained from the use of body-worn cameras.

Occupations Code 2B.0101(1), .0106, .0107

Prohibited Release of Recording

A law enforcement agency may not release any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

A recording is confidential and excepted from the requirements of the Public Information Act if the recording was:

1. Not required to be made under Occupations Code Subchapter N or another law or under a policy adopted by the law enforcement agency; and

2. Does not relate to a law enforcement purpose.

"Private space" means a location in which a person has a reasonable expectation of privacy, including a person's home.

Occupations Code 2B.0101(1), .0112(f), (h)

Motor Vehicle Stops

A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including the information required by Code of Criminal Procedure 2B.0054(a).

The chief administrator of a law enforcement agency is responsible for auditing these reports to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

Code of Criminal Procedure 2B.0054

A law enforcement agency shall compile and analyze the information contained in each report received by the agency. Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the previous calendar year to TCOLE. *Code of Criminal Procedure 2B.0055*

Civil Penalty

If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Code of Criminal Procedure 2B.0055, the department is liable to the state for a civil penalty in an amount not to exceed $5,000 for each violation. *Code of Criminal Procedure 2B.0058(a)*

Racial Profiling

A peace officer may not engage in racial profiling. *Code of Criminal Procedure 2B.0052*

Each law enforcement agency that employs peace officers who make traffic stops in the routine performance of the officer's official duties shall adopt a detailed written policy on racial profiling that complies with Code of Criminal Procedure 2B.0053(b). *Code of Criminal Procedure 2B.0053*

Mental Health Crisis or Substance Abuse Issue

A law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

1. There is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

2. It is reasonable to divert the person;

3. The offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

4. The mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

This requirement does not apply to a person who is accused of specified offenses involving intoxication.

Code of Criminal Procedure 16.23

Administration of Epinephrine

A law enforcement agency may acquire and possess epinephrine delivery systems and a peace officer may possess and administer an epinephrine delivery system in accordance with Occupations Code Chapter 1701, Subchapter O. *Occupations Code 1701.702(a)* [See FFAC regarding district maintenance and administration of epinephrine delivery systems.]

An epinephrine delivery system is a medical delivery device approved by the United States Food and Drug Administration that delivers a dose of epinephrine intended for use to treat anaphylaxis, including an epinephrine auto-injector and an epinephrine nasal spray.

Occupations Code 1701.701(2-a)

Officer-Involved Injury or Death

"Officer-involved injury or death" means an incident during which a peace officer discharges a firearm causing injury or death to another.

Not later than the 30th day after the date of an officer-involved injury or death, the law enforcement agency employing an officer involved in the incident must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2A.206(b).

Code of Criminal Procedure 2A.206

Not later than the 30th day after the date of the occurrence of an incident in which, while a peace officer is performing an official duty, a person who is not a peace officer discharges a firearm and causes injury or death to the officer, the law enforcement agency employing the injured or deceased officer at the time of the incident

must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2A.207(a). *Code of Criminal Procedure 2A.207(b)*

Failure to Report

A law enforcement agency that fails to submit the required report on or before the seventh day after the date the agency received notice of failure to report from the office of the attorney general, is liable for a civil penalty in the amount of $1,000 for each day after the seventh day that the agency fails to submit the report. Beginning on the day after the date of receiving notice of failure to report, a law enforcement agency that, in the five-year period preceding the date the agency received the notice, has been liable for a civil penalty is liable for a civil penalty for each day the agency fails to submit the required report in the amount of $10,000 for the first day and $1,000 for each additional day that the agency fails to submit the report. *Code of Criminal Procedure 2A.208(b), (c)*

Complaints Against Peace Officers

To be considered by the head of the district's police department, a complaint against a district peace officer must be in writing and signed by the person making the complaint. A copy of the complaint shall be given to the officer within a reasonable time after it is filed. Disciplinary action may not be taken against the officer unless a copy of the signed complaint is given to the officer. The officer may not be indefinitely suspended or terminated based on the subject matter of the complaint unless the complaint is investigated and there is evidence to prove the allegation of misconduct. *Gov't Code 614.021-.023; Colorado County v. Staff, 510 S.W.3d 435 (Tex. 2017); Atty. Gen. Op. GA-251 (2004)*

On the commencement of an investigation by a law enforcement agency of a complaint by an individual who believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer. *Code of Criminal Procedure 2B.0053(b)(3), (c)*

[See DGBA, FNG, and GF for appeals.]

Legal Representation

A district shall provide a district employee who is a peace officer with legal counsel without cost to the employee to defend the employee against a suit for damages by a party other than a governmental entity if legal counsel is requested by the employee, and the suit involves an official act of the employee within the scope of the employee's authority.

To defend the employee against the suit, the district may provide counsel already employed by it or may employ private counsel.

An employee may recover from a district that fails to provide counsel as required the reasonable attorney's fees incurred in defending the suit if the trier of fact finds that the fees were incurred in defending a suit covered by these provisions and the employee is without fault or that the employee acted with a reasonable good faith belief that the employee's actions were proper.

Local Gov't Code 180.002(b)-(d)

Note: For general provisions applicable to district security personnel, including school marshals, see CKE.

Board Authority

The board may appoint one or more school marshals for each campus. *Education Code 37.0811(a)*

Definition

A school marshal is a person who is appointed to serve as a school marshal by the board under Education Code 37.0811, is licensed under Occupations Code 1701.260, and has powers and duties described by Code of Criminal Procedure 2A.008. *Occupations Code 1701.001(8)*

Eligibility

The board may select for appointment as a school marshal an applicant who is an employee of the district and certified as eligible for appointment under Occupations Code 1701.260. *Education Code 37.0811(b)*

TCOLE Licensing

To be eligible for appointment as a school marshal, an applicant shall:

1. Successfully complete all prerequisite Texas Commission on Law Enforcement (TCOLE) training;
2. Pass the state licensing exam;
3. Be employed and appointed by an authorized school district; and
4. Meet all statutory requirements, including psychological fitness.

37 TAC 227.3(a); Code of Criminal Procedure 2A.008(b)

A school marshal training program is open to any employee of a district who holds a license to carry a handgun issued under Government Code Chapter 411, Subchapter H. *37 TAC 227.5(a)*

TCOLE shall license an eligible person who:

1. Completes required training to the satisfaction of TCOLE staff; and
2. Is psychologically fit to carry out the duties of a school marshal as indicated by the results of the psychological examination administered under Occupations Code 1701.260(d).

Occupations Code 1701.260(f)

Psychological Fitness

In order for an individual to enroll in any school marshal licensing training, obtain a school marshal license, or renew or reapply for a

school marshal license, they must first demonstrate psychological fitness through a psychological examination.

The psychological examination shall be conducted by a professional selected by the district. The professional shall be either a psychologist licensed by the Texas State Board of Examiners of Psychologists or a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties of a school marshal.

The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of:

1. A review of the duties and responsibilities of a school marshal as developed by TCOLE;
2. At least two instruments, one which measures personality traits and one which measures psychopathology; and
3. A face-to-face interview conducted after the instruments have been scored.

The individual must be declared by that professional, on a form prescribed by TCOLE, to be in satisfactory psychological and emotional health to carry out the duties of a school marshal in an emergency shooting or situation involving an active shooter.

If, after examination, the professional declines to declare the individual as psychologically fit, the individual must report the outcome to TCOLE on a form prescribed by TCOLE.

An examination for license renewal or reactivation must be conducted within 90 days of the date of the application for license renewal or reactivation.

37 TAC 227.4

Reimbursement for Training

The board may, but shall not be required to, reimburse the amount paid by the applicant to participate in the training program under Occupations Code 1701.260. *Education Code 37.0811(b)*

District Responsibilities

A district shall:

1. Submit and receive approval for an application to appoint a person as a school marshal;
2. Upon authorization, notify TCOLE using approved format prior to appointment;

3. Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the district;

4. Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the district, TCOLE standards, another state agency, or under other law;

5. Immediately report to TCOLE a school marshal's violation of any TCOLE standard, including the discharge of a firearm carried under the authorization of these provisions outside of a training environment; and

6. Immediately report to TCOLE any indication, suspicion, or allegation that a school marshal is no longer psychologically fit to carry out the duties of a school marshal.

For five years, the district must retain documentation that the district has met all requirements under law in a format readily accessible to TCOLE. This requirement does not relieve a district from retaining all other relevant records not otherwise listed.

37 TAC 227.1

Powers and Duties

A school marshal may make arrests and exercise all authority given to peace officers under the Code of Criminal Procedure, subject to written regulations adopted by the board and may only act as necessary to prevent or abate the commission of an offense that threatens serious bodily injury or death of students, faculty, or visitors on school premises.

A school marshal may not issue a traffic citation for a violation of the Transportation Code.

Code of Criminal Procedure 2A.008(c), (d)

Reporting Requirements

Once appointed, a school marshal shall:

1. Immediately report to TCOLE and the district any circumstance which would render them unauthorized to act as a school marshal by virtue of their employment with the district, failure to meet the standards of TCOLE, another state agency, or under law;

2. Immediately report to TCOLE any violation of applicable TCOLE standards, including any discharge of a firearm carried under the authorization of these provisions outside of training environment; and

3. Comply with all requirements under law, including Education Code 37.0811.

37 TAC 227.3(b)

Fit for Duty Review

When TCOLE receives a report or other reliable information that a school marshal may no longer be psychologically fit to carry out the duties of a school marshal, TCOLE may:

1. Issue an emergency suspension order; or
2. Require a fit for duty review upon identifying factors that indicate the licensee may no longer be able to perform the duties of a school marshal safely and effectively.

TCOLE shall provide written notice of the psychological examination to the license holder not later than the 10th business day before the deadline to submit to the examination. Written notice shall include the reasons for the examination.

The examination shall be conducted by a psychiatrist or psychologist chosen by the licensee.

To facilitate the examination of any licensee, TCOLE will provide all appropriate documents and available information.

The examining practitioner will provide TCOLE with a report indicating whether the school marshal is fit for duty. If the school marshal is unfit for duty, the practitioner will include the reasons or an explanation why the individual is unfit for duty.

A second examination may be ordered by TCOLE if it questions the practitioner's report. The examination will be conducted by a psychiatrist or psychologist appointed by TCOLE. If the report of the appointed practitioner disagrees with the report of the initial practitioner, the final determination as to the school marshal's fitness shall be decided by the executive director of TCOLE.

A school marshal who fails a psychological examination shall have their license suspended until the executive director orders it reinstated.

Any school marshal ordered to undergo a fit for duty review shall comply with the terms of the order and cooperate fully with the examining practitioner.

34 TAC 227.6

Handgun Possession

A school marshal may carry or possess a handgun on the physical premises of a school, but only:

1. In the manner provided by written regulations adopted by the board; and

2. At a specific school as specified by the board.

Accessing Handgun

A school marshal may use a handgun the school marshal is authorized to carry or possess only under circumstances that would justify the use of deadly force under Penal Code 9.32 or 9.33.

Board Regulations

A board's written regulations must provide that a school marshal may:

1. Carry a concealed handgun on the school marshal's person;

2. If wearing a uniform identifying the marshal as a school marshal, openly carry a handgun on the school marshal's person; or

3. Possess the handgun on the physical premises of a school in a locked and secured safe or other locked and secured location.

The written regulations must also require that a handgun carried or possessed by a school marshal be loaded only with frangible duty ammunition approved for that purpose by TCOLE.

Inactive Status

A district employee's status as a school marshal becomes inactive on:

1. Expiration of the employee's school marshal license under Occupations Code 1701.260;

2. Suspension or revocation of the employee's license to carry a handgun;

3. Termination of the employee's employment with the district; or

4. Notice from the board that the employee's services as school marshal are no longer required.

Education Code 37.0811(c)-(f)

Identity Confidential

The identity of a school marshal is confidential and is not subject to a request under the Public Information Act, except that the person's name, date of birth, and handgun license number, and the address of the person's place of employment must be provided by TCOLE to:

1. The director of the Department of Public Safety;

2. The district;

3. The chief law enforcement officer of the local municipal law enforcement agency if the person is employed at a campus of a district located within a municipality;

4. The sheriff of the county if the person is employed at a campus of a district that is not located within a municipality; and

5. The chief administrator of any school district-commissioned peace officer, if the person is employed at a district that has commissioned peace officers.

If a parent or guardian of a student enrolled at a school inquires in writing, the district shall provide the parent or guardian written notice indicating whether any employee of the school is currently appointed as a school marshal. The notice may not disclose information that is confidential.

Education Code 37.0811(g), (h); Occupations Code 1701.260(j)

No State Benefits

A school marshal is not entitled to state benefits normally provided by the state to a peace officer. *Code of Criminal Procedure 2A.008(e)*

Memorandum of Understanding to Share Marshal

A district may enter into a memorandum of understanding with another district, open-enrollment charter school, or private school under which a school marshal appointed to a campus of the district may temporarily act as a school marshal at a campus of the other school for the duration of an event occurring at the campus of the other school at which both schools are participating. The memorandum of understanding must comply with the requirements for written regulations under Education Code 37.0811 [see Handgun Possession, above] and may be used to satisfy the requirement for written regulations or written authorization under Penal Code 46.03(a)(1) to allow that school marshal to carry a firearm on the premises of the school at which the event occurs. *Education Code 37.08131*

Facility Usage Report

"Instructional facility" has the meaning assigned by Education Code 46.001. [See CCA]

TEA by rule shall require a district to annually report the following information in the form and manner prescribed by TEA:

1. The square footage of each district facility and the acreage of land on which each facility sits;
2. The total student capacity for each instructional facility on a district campus;
3. For each campus in the school district:
    a. The enrollment capacity of the campus and of each grade level offered at the campus; and
    b. The number of students currently enrolled at the campus and in each grade level offered at the campus;
4. Whether a district facility is used by one or more campuses and the campus identifier of each campus that uses the facility;
5. What each district facility is used for, including:
    a. An instructional facility;
    b. A career and technology center;
    c. An administrative building;
    d. A food service facility;
    e. A transportation facility; and
    f. Vacant land; and
6. Whether each district facility is leased or owned.

From the information submitted, TEA shall produce and make available to the public on its website an annual report on school district land and facilities.

If TEA determines provided information would create a security risk, it is considered confidential under the Public Information Act and may not be disclosed in the annual report.

Education Code 7.0611

Reduction of Energy Consumption

The board shall establish a long-range energy plan to reduce the district's annual electric consumption by five percent beginning with the 2008 state fiscal year and consume electricity in subsequent

fiscal years in accordance with the district's energy plan. The plan must include:

1. Strategies for achieving energy efficiency that:
    a. Result in net savings for the district; or
    b. Can be achieved without financial cost to the district; and
2. For each strategy identified above, the initial, short-term capital costs and lifetime costs and savings that may result from implementation of the strategy.

A strategy for achieving energy efficiency includes facility design and construction.

In determining whether a strategy may result in financial cost to the district, the board shall consider the total net costs and savings that may occur over the seven-year period following implementation of the strategy.

The board may submit the plan to the State Energy Conservation Office for the purposes of determining whether funds available through loan programs administered by the office or tax incentives administered by the state or federal government are available to the district. The board may not disallow any proper allocation of incentives.

Education Code 44.902

Energy Savings Performance Contracts

"Energy savings performance contract" has the meaning assigned by Local Government Code 302.001.

Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. An energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

The board may enter into energy savings performance contracts only with persons who are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

Government Code Chapter 2269 (Contracting and Delivery Procedures for Construction Projects) does not apply to energy savings performance contracts.

Performance Bond

Before entering an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond relating to the installation of the measures in accordance with Government Code Chapter 2253 (Public Work Performance and Payment Bonds). The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

Financing

An energy savings performance contract may be financed:

1. Under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing.
2. With the proceeds of bonds.
3. Under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

Notwithstanding other law, the board may use any available money to pay the provider of the energy or water conservation measures under these provisions, and the board is not required to pay for such costs solely out of the savings realized by the district under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the district under the contract. If the term of an energy savings performance contract exceeds one year, the district's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures as determined by the district, divided by the number of years in the contract term.

Contract Procurement

An energy savings performance contract shall be let according to the procedures established for professional services by Government Code 2254.004 (the Professional Services Procurement Act). [See CH] Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

Cost Savings Review

Before entering into an energy savings performance contract, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Occupations Code 1001.053 and 1001.407 (Texas Engineering Practice Act) apply to work performed under the contract.

Education Code 44.901

Recycling Program

A district shall:

1. Establish a program for the separation and collection of all recyclable materials generated by the district's operations.
2. Provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials.
3. Evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled.
4. Establish educational and incentive programs to encourage maximum employee participation.

Health and Safety Code 361.425; 30 TAC 328.202

Exemptions

These provisions do not apply to a school district with a student enrollment of less than 10,000 students.

A district may exclude one or more recyclable materials from their program if the Texas Commission on Environmental Quality (TCEQ) finds that:

1. A recycling program for a recyclable material is not available through their solid waste provider; or
2. The inclusion of a recyclable material would create a hardship.

A district may request additional consideration from TCEQ if compliance with these provisions would create a hardship.

30 TAC 328.204

Definitions

“Hardship” means a circumstance that causes unreasonable burden on the governmental entity.

“Recyclable material” means a material generated by the entity's operations, including aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

30 TAC 328.201(2), (3)

Pools

Generally

For required public pool sanitation and safety standards, see Health and Safety Code 341.064 and .0645 and 25 Administrative Code 265.181–.198.

Drains

Each public pool and spa shall comply with the drain cover standards found at 15 U.S.C. Section 8003. “Public pool and spa’’ means a swimming pool or spa that is open to the public generally, whether for a fee or free of charge. *15 U.S.C. 8003*

Buildings

A school building must be located on grounds that are well-drained and maintained in a sanitary condition. A school building must be properly ventilated and provided with an adequate supply of drinking water, an approved sewage disposal system, handwashing facilities, a heating system, and lighting facilities that conform to established standards of good public health engineering practices.

Lunchrooms

A school lunchroom must comply with state food and drug regulations.

Custodial Services

A school building and its appurtenances shall be maintained in a sanitary manner. A full-time building custodian or janitor shall know the fundamentals of safety and school sanitation.

Health and Safety Code 341.065

Structural Pest Control

A district may obtain pest control services for school buildings only by:

1. Contracting with a person who holds a license to perform the services; or
2. Requiring a district employee who is licensed as a certified noncommercial applicator or technician to perform the services.

Occupations Code 1951.459

Integrated Pest Management Program

Each district shall establish, implement, and maintain an integrated pest management (IPM) program. An IPM program is a regular set of procedures for preventing and managing pest problems using an integrated pest management strategy. The school district is responsible for each IPM coordinator's compliance with the regulations in 4 Administrative Code 7.201–.205 (Division 7). *Occupations Code 1951.212; 4 TAC 7.201*

Definitions

"Integrated pest management" means a pest management strategy that relies on multiple pest control tactics, including the judicious use of pesticides, informed by accurate identification and scientific knowledge of pests, reliable monitoring methods to assess pest presence, preventative measures to avoid pest infestations, and thresholds to determine when corrective control measures are needed. *4 TAC 7.114(13)*

"Area of common access" means an area that an individual is likely to be present in or at on a regular basis, such as a building entranceway, mailboxes, laundry rooms, beverage machines, building bulletin boards, hallways, etc. *4 TAC 7.114(3)*

IPM Program Requirements

The IPM program shall contain these essential elements:

1. A board-approved IPM policy, stating the district's commitment to follow integrated pest management guidelines in all pest control activities that take place on district property. The IPM policy statement shall include:
    a. A definition of IPM consistent with this section;
    b. A reference to Texas laws and rules governing pesticide use and IPM in public schools;
    c. Information about who can apply pesticides on school district property; and
    d. Information about designating, registering, and required training for the district's IPM coordinator. The superintendent and IPM coordinator shall maintain a copy of the policy.
2. A monitoring program to determine when pests are present and when pest problems are severe enough to justify corrective action;
3. The preferential use of lower risk pesticides and the use of non-chemical management strategies to control pests, rodents, insects, and weeds;
4. A system for keeping records of facility inspection reports, pest-related work orders, pest control service reports, pesticide applications, and pesticide complaints;
5. A plan for educating and informing district employees about their roles in the IPM program; and
6. Written guidelines that identify thresholds for when pest control actions are justified.

4 TAC 7.201(1)

IPM Coordinator

The superintendent shall appoint an IPM coordinator to implement the district's IPM program. Not later than 90 days after the superintendent designates or replaces an IPM coordinator, the district must report to the Texas Department of Agriculture (TDA) the newly appointed coordinator's name, address, telephone number, e-mail address and the effective date of the appointment. A district that appoints more than one IPM coordinator shall designate a responsible IPM coordinator who will have overall responsibility for the IPM program and provide oversight of subordinate IPM coordinators regarding IPM program decisions. When a district removes an IPM coordinator, the departing IPM coordinator, superintendent,

or superintendent's designee must notify TDA of the removal within ten days in writing. A district may not be without an IPM coordinator for more than 30 days. *Occupations Code 1951.212(e); 4 TAC 7.201(2)*

Training

The IPM coordinator shall:

1. Successfully complete a TDA-approved IPM coordinator training course within six months of appointment; and
2. Obtain at least six hours of TDA-approved IPM continuing education units every three years in accordance with the requirements of 4 Administrative Code 7.202.

Occupations Code 1951.212(f); 4 TAC 7.202

Duties

In addition to implementing the district's IPM program, the IPM coordinator shall oversee and be responsible for:

1. Coordination of pest management personnel, ensuring that all school employees who perform pest control, including those employees authorized to perform incidental use applications, have the necessary training, are equipped with the appropriate personal protective equipment, and have the necessary licenses for their pest management responsibilities;
2. Ensuring that all IPM program records, including incidental use training records, pest-related work orders, pest control service reports, pesticide applications, and pesticide complaints are maintained for a period of two years and are made available to a TDA inspector upon request;
3. Working with district administrators to ensure that all pest control proposal specifications for outside contractors are compatible with IPM principles, and that contractors work under the guidelines of the district's IPM policy;
4. Ensuring that all pesticides used on district property are in compliance with the district's IPM program and that current pesticide labels and safety data sheets (SDS) are available for interested individuals upon request;
5. Overseeing and implementing that portion of the plan that ensures that district administrators and relevant district personnel are provided opportunities to be informed and educated about their roles in the IPM program, reporting, and notification procedures;
6. Ensuring that pesticide applications, including the approval of emergency applications at buildings and on district grounds, are conducted in accordance with Division 7; and

7. Maintaining a current copy of the school district's IPM policy and making it available to a TDA inspector upon request.

4 TAC 7.202(d)

Licensed Applicator

A district that engages in pest control activities must employ or contract with a licensed applicator, who may, if an employee, also serve as the IPM coordinator. *4 TAC 7.201(3)*

The certified commercial or noncommercial certified applicator or licensed technician shall:

1. Apply only United States Environmental Protection Agency (EPA) labeled pesticides, appropriate for the target pest, except as provided in Division 7;
2. Provide the structural pest management needs of the district by following the district's IPM program and these regulations;
3. Obtain written approval from the IPM coordinator for the use of pesticides in accordance with Division 7;
4. Handle and forward to the IPM coordinator records of IPM activities, any complaints relating to pest problems, and pesticide use;
5. Ensure that pesticide use records are forwarded to the IPM coordinator within two business days or in a time frame as agreed to by the IPM coordinator;
6. Consult with the IPM coordinator concerning the use of control measures in buildings and grounds, including residential properties; and
7. Ensure that all pest control activities are consistent with the district's IPM program and IPM policy.

4 TAC 7.203

Notice

A district shall prior to or by the first week of school attendance, ensure that a procedure is in place to provide prior notification of pesticide applications in accordance with 4 Administrative Code Chapter 7. Individuals who request in writing to be notified of pesticide applications may be notified by telephonic, written, or electronic methods. *4 TAC 7.201(4)*

The chief administrator, IPM coordinator, or building manager must notify individuals who work in a district building of an indoor pest control treatment by:

1. Posting the sign made available by the certified applicator or technician in an area of common access that the individuals

are likely to check on a regular basis at least 48 hours before each planned treatment; and

2. Making available, on request, the consumer information sheet made available by the certified applicator or technician.

Occupations Code 1951.455(a); 4 TAC 7.146(c), .147(e), .148(b)

Chief administrators or the IPM coordinators of schools must notify the parents or guardians of children attending the facility in writing that pesticides are periodically applied indoors and outdoors, and that information on the times and types of applications and prior notification is available upon request. Such notification must be made at the time of the students' registration. Telephonic, written, or electronic notification of planned applications will meet the notification requirements. *4 TAC 7.148(c); Occupations Code 1951.455(b)* [See FD]

Emergency Exception

The pre-notification requirements of 4 Administrative Code 7.146–.148 are waived if the customer and certified applicator sign a statement attesting to the fact that an emergency exists which requires immediate treatment. If such an emergency exists, the consumer information sheet must be made available by the licensee. The statement must be kept on file with the pest control use records. If the customer is not available to sign a statement at the time of treatment, that shall be recorded in the use records along with the customer's name and telephone number. An emergency is defined as an imminent hazard to health. An emergency treatment is limited to the localized area of the emergency. *4 TAC 7.147(g), .148(d)*

Pesticide Use

All pesticides used by districts must be registered with the EPA and the TDA, with the exception of those pesticides that have been exempted from registration by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 25(b). All pesticides used by districts must also bear a label as required by FIFRA and Chapter 76 of the Texas Agriculture Code. Pesticide use must also meet the following requirements:

1. Pest control signs shall be posted at least 48 hours prior to a pesticide application inside district buildings, including residential properties, as provided for under 4 Administrative Code 7.148.

2. For outdoor applications made on district grounds, including residential properties, the treated area must be identified at all entry points with a sign, or must be secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape, or periodically monitored to

keep students out of the treated area until the allowed reentry time.

3. Pesticides used on district property shall be mixed outside of student occupied areas of buildings and grounds.

4. The use of non-pesticide control measures, non-pesticide monitoring tools and mechanical devices, such as glue boards and traps as permitted in accordance with Division 7, are exempt from posting requirements. The use of non-pesticide tools and devices by unlicensed district personnel, for monitoring purposes, shall be permitted. Monitoring by unlicensed district personnel shall be done only as directed, under the supervision of the IPM coordinator.

5. Pesticide applications shall not be made to outdoor school grounds if such an application will expose students to physical drift of pesticide spray particles. Reasonable preventative measures shall be taken to avoid the potential of drift to occur.

6. Districts are allowed to apply the pesticides to control pests, rodents, insects, and weeds at school buildings, grounds, or other facilities in accordance with the approval for use and restrictions listed for each category detailed in 4 Administrative Code 7.204(6).

4 TAC 7.204

Incidental Use

The Incidental Use For Schools Fact Sheet must contain the text specified in 4 Administrative Code 7.205 and must be provided during pesticide instruction and training by the IPM coordinator to each district employee whose primary duty is not pest control, and whose work may include tasks subject to the exception. The IPM coordinator must keep records of all the training conducted annually. Pest control use records for all incidental pesticide use application, including the reason for application and justification for emergency, must be maintained by the IPM coordinator for two years. *4 TAC 7.205*

Inspections

School districts will be inspected at least once every five years. TDA may waive these requirements due to TDA staff availability, budgetary constraints, inspection trends, or operational efficiencies. School districts demonstrating a lack of compliance with TDA rules may be inspected more frequently based on risk using the following elements of consideration: prior violations, prior inspection results, and prior complaints. *4 TAC 7.149*

Fire Safety Inspection Reports

A person who conducts a fire safety inspection [see CKD regarding automated external defibrillator examinations] must provide a written report of the inspection and any relevant paperwork pertaining to the findings of the inspection to the principal of the school and the superintendent.

At the time the person provides the report they must indicate on the report the method by which, and the time and date on which, the person provided the report to the appropriate person. The report must be filed at the school campus to which the report relates and according to the year in which the inspection occurred.

Gov't Code 419.909(b-2)

Flags

On all regular school days, every public school shall fly the United States and Texas flags. *Education Code 1.003*

The board shall require that the United States and Texas flags be prominently displayed in accordance with 4 U.S.C. Sections 5-10 and Government Code Chapter 3100 in each campus classroom to which a student is assigned at the time the pledges of allegiance to those flags are recited. [See EC] A district is not required to spend federal, state, or local district funds to acquire flags under this provision. A district may raise money or accept gifts, grants, and donations to acquire flags. *Education Code 25.082(b-1)*

National Motto

A public school must display in a conspicuous place in each building of the school a durable poster or framed copy of the United States national motto, “In God We Trust,” if the poster or framed copy meets the requirements below and is donated for display at the school or purchased from private donations and made available to the school.

A poster or framed copy of the national motto described above:

1. Must contain a representation of the United States flag centered under the national motto and a representation of the state flag; and

2. May not depict any words, images, or other information other than the representations listed in item 1.

A public school may accept and use private donations for the purposes of this provision.

A classroom teacher at a public elementary or secondary school may not be prohibited from displaying in a classroom a poster or framed copy of the national motto that meets the requirements above.

Education Code 1.004

Ten Commandments

A public elementary or secondary school shall display in a conspicuous place in each classroom of the school a durable poster or framed copy of the Ten Commandments that meets these requirements:

1. A poster or framed copy of the Ten Commandments must include only the text of the Ten Commandments as provided by Education Code 1.0041(c) in a size and typeface that is legible to a person with average vision from anywhere in the classroom in which the poster or framed copy is displayed and be at least 16 inches wide and 20 inches tall.

2. The text of the poster or framed copy of the Ten Commandments must read as follows:

"The Ten Commandments

I AM the LORD thy God.

Thou shalt have no other gods before me.

Thou shalt not make to thyself any graven images.

Thou shalt not take the Name of the Lord thy God in vain.

Remember the Sabbath day, to keep it holy.

Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee.

Thou shalt not kill.

Thou shalt not commit adultery.

Thou shalt not steal.

Thou shalt not bear false witness against thy neighbor.

Thou shalt not covet thy neighbor's house.

Thou shalt not covet thy neighbor's wife, nor his manservant, nor his maidservant, nor his cattle, nor anything that is thy neighbor's."

A public elementary or secondary school in which each classroom does not include a poster or framed copy of the Ten Commandments must accept any offer of a privately donated poster or framed copy of the Ten Commandments provided that the poster or copy meets the requirements above and does not contain any additional content; and display the poster or framed copy as specified above.

A public elementary or secondary school in which each classroom does not include a poster or framed copy of the Ten Commandments as required may, but is not required to, purchase posters or copies that meet the requirements using district funds.

A public elementary or secondary school is not exempt from this requirement.

The attorney general shall defend a public elementary or secondary school in a cause of action relating to any claims arising out of a school's compliance with this section. In a cause of action defended by the attorney general, the state is liable for the expenses, costs, judgments, or settlements of the claims arising out of the

representation. The attorney general may settle or compromise any and all claims.

Education Code 1.0041

The U.S. and Texas flags shall be prominently displayed in each classroom to which a student is assigned during the time that the pledges of allegiance to those flags are recited.

Table of Contents

Instructional Materials and Technology Furnished Without Cost to Students 2
Instructional Materials and Technology Allotment 2
Allotment Adjustment 2
Permitted Expenditures 3
Prohibited Expenditures 4
Technological Equipment 5
Instructional Materials and Technology Account 5
Availability of Allotment Funds 6
Additional State Aid 6
For State-Approved Instructional Materials 6
For Open Education Resource Instructional Materials 7
Purchasing Method 8
Requisitions, Use, and Distribution 8
Delegation of Authority 8
Local Funds 8
Online Requisition Program 8
Distribution 8
OER Instructional Materials 8
OER Transition Plan 9
OER Instructional Material Support Program 10
Requisition 10
Parent Portal 11
Bilingual Instructional Materials 11
Certification of Instructional Materials 11
Annual Report 12
Ownership 12
Responsibility for Instructional Materials and Equipment 12
Acceptable Condition 13
Lost or Damaged Instructional Materials 14
Sale or Disposal 14
Sale 14
Disposal 14

Note: For provisions regarding selection and adoption of instructional materials, see EFA.

Instructional Materials and Technology Furnished Without Cost to Students

Instructional materials selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Education Code 31.104(d), a district may not charge a student for instructional material or technological equipment purchased by the district with the district's technology and instructional materials allotment. *Education Code 31.001*

Each instructional material, including electronic instructional material only to the extent of any applicable licensing agreement, purchased as provided by Education Code Chapter 31 for a district is the property of the district. *Education Code 31.102(a)-(b)*

Instructional Materials and Technology Allotment

A district is entitled to an allotment each biennium from the state instructional materials and technology fund for each student enrolled in the district on a date during the last year of the preceding biennium specified by the commissioner of education. The commissioner shall determine the amount of the allotment per student each biennium on the basis of the amount of money available in the state instructional materials and technology fund to fund the allotment. The allotment shall be transferred from the state instructional materials and technology fund to the credit of the district's instructional materials and technology account as provided by Education Code 31.0212. *Education Code 31.0211(a)*

The commissioner shall, as early as practicable during each biennium, notify each district of the estimated amount to which the district will be entitled during the next fiscal biennium. *Education Code 31.0215(a)*

The commissioner shall determine the amount of the Instructional Materials and Technology Allotment for a district based on PEIMS student enrollment data from the fall snapshot collection of the school year preceding the first year of each biennium.

The amount of the allotment determined by the commissioner is final and may not be appealed.

19 TAC 67.1001(a), (d)

Allotment Adjustment

Change in Enrollment

Not later than May 31 of each school year, a district may request that the commissioner adjust the number of students for which the district is entitled to receive an allotment on the grounds that the number of students attending school in the district will increase or decrease during the school year for which the allotment is provided. The commissioner may also adjust the number of students

for which a district is entitled to receive an allotment, without a request by the district, if the commissioner determines a different number of students is a more accurate reflection of students who will be attending school in the district. The commissioner's determination is final. *Education Code 31.0211(e)*

High Enrollment Growth

Each year the commissioner shall adjust the instructional materials and technology allotment of districts experiencing high enrollment growth. *Education Code 31.0214(a)*

Permitted Expenditures

The allotment funds may be used to purchase or pay for:

1. Instructional materials, regardless of whether the instructional materials are on the list of approved instructional materials maintained by the State Board of Eduction (SBOE) under Education Code 31.022;
2. Consumable instructional materials;
3. Instructional materials for use in bilingual education classes, as provided by Education Code 31.029;
4. Instructional materials for use in college preparatory courses under Education Code 28.014, as provided by Education Code 31.031;
5. Supplemental instructional materials;
6. OER instructional materials, as provided by Education Code Chapter 31, Subchapter B-1;
7. Instructional materials and technological equipment under any continuing contracts of the district in effect on September 1, 2011;
8. Technological equipment necessary to support the use of any instructional materials purchased with an allotment under this provision;
9. Inventory software or systems for storing, managing, and accessing instructional materials and analyzing the usage and effectiveness of instructional materials;
10. Services, equipment, and technology infrastructure necessary to ensure internet connectivity and adequate bandwidth;
11. Training educational personnel directly involved in student learning in the appropriate use of instructional materials and for providing for access to technological equipment for instructional use;

12. Training personnel in the electronic administration of assessment instruments;

13. The salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning;

14. Costs associated with distance learning, including services, equipment, and technology such as Wi-Fi, internet access hotspots, wireless network service, broadband service, and other services and technological equipment necessary to facilitate internet access;

15. Costs associated with providing parental access to the district's library materials catalog and the ability to submit a list of library materials that the parent's child is not allowed to access as required by Education Code 33.023. [See EFB]

16. Formats of instructional materials that are fully accessible to students with disabilities;

17. Activities related to the local review and adoption of instructional materials; and

18. Software for analyzing the use and effectiveness of instructional materials.

Education Code 31.0211(c), 33.023(d); 19 TAC 67.1001(e)

Prohibited Expenditures

The allotment funds may not be used to purchase instructional material that:

1. Contains obscene or harmful content or would otherwise cause the district to which the funds were allotted to be unable to submit the certification required under Education Code 31.1011(a)(1)(B) [see Certification of Instructional Materials, below]; or

2. Is on the list of rejected instructional materials maintained by the SBOE.

Education Code 31.0211(f)

Allotment funds may not be used to pay for:

1. Services for installation;

2. The physical conduit that transmits data, such as cabling and wiring, or electricity;

3. Office and school supplies;

4. Items that are not directly related to student instruction, such as furniture, athletic equipment, extension cords, temporary contractors, or video surveillance equipment;

5. Travel expenses;

6. Equipment used for moving or storing instructional materials;

7. Instructional material that contains obscene or harmful content or would otherwise cause the district to be unable to submit the certification required under Education Code 31.11011(a)(1)(B); or

8. Instructional material that incorporates three-cueing in the phonics curriculum required under Education Code, Chapter 28.

19 TAC 67.1001(f)

A district may not adopt or otherwise use instructional material included on the list of rejected instructional materials maintained by the SBOE. *Education Code 31.024*

Technological Equipment

In purchasing technological equipment, a district shall:

1. Secure technological solutions that meet the varying and unique needs of students and teachers in the district; and

2. Consider both the long-term cost of ownership of the technological equipment and flexibility for innovation.

Education Code 31.0211(d)

Instructional Materials and Technology Account

The commissioner shall maintain an instructional materials and technology account for each district. In the first year of each biennium, the commissioner shall deposit the district's allotment in the account. The commissioner shall pay the cost of instructional materials requisitioned by a district under Education Code 31.103 using funds from the district's instructional materials and technology account.

Money deposited in a district's instructional materials and technology account during each state fiscal biennium remains in the account and available for use by the district for the entire biennium. At the end of each biennium, a district with unused money in the district's account may carry forward any remaining balance to the next biennium.

A district shall provide to TEA the title and publication information for any instructional materials requisitioned or purchased by the

district with the district's instructional materials and technology allotment.

Education Code 31.0212(a)-(d)

Availability of Allotment Funds

The allotment for each biennium will be made available for district use through EMAT as early as possible in the fiscal year preceding the beginning of the biennium for which the funds have been appropriated.

A district may access its allotment funds for an upcoming school year after submitting to the commissioner:

1. Certification that the school district or open-enrollment charter school has instructional materials that cover all the required TEKS, except those for physical education, as required by Education Code 31.1011;
2. Certification that the school district or open-enrollment charter school has used its allotment for only allowable expenditures; and
3. Information regarding the instructional materials used by the district during the previous school year, including the cost of each material as required by Education Code 31.1012.

Upon completion of the requirements, a district may access its allotment funds by correctly providing all the information required in the state ordering system.

Information required in the state ordering system may include verification of TEKS coverage for certain disbursement requests.

19 TAC 67.1001(g)-(j)

Additional State Aid

For State-Approved Instructional Materials

For each student enrolled in the district, a school district is entitled to additional state aid for each school year in an amount equal to $40, or a greater amount provided by appropriation, to procure instructional material that has been reviewed by the Texas Education Agency (TEA); placed on the SBOE list of approved instructional materials; designated by the SBOE as being included or capable of being included in an instructional materials parent portal; and acquired from a publisher, manufacturer, or other entity that has not been found to violate Education Code 31.151. *Education Code 48.307(a)*

A district is entitled to the amount of state aid provided by 19 Administrative Code 67.1003(a) each school year, regardless of whether the district uses the amount during the school year for which the amount was provided. *19 TAC 67.1003(i)*

For Open Education Resource Instructional Materials

Subject to Education Code 31.0751 (Open Education Resource [OER] transition plan), a district is entitled to additional state aid for each school year in an amount not to exceed $20 for each student for the costs incurred or for which the district is obligated to pay during the school year in which the aid is provided for the printing and shipping of OER instructional material made available under Education Code Chapter 31, Subchapter B-1. *Education Code 48.308(a)*

Amount of Additional State Aid

The commissioner of education shall determine the amount of the additional state aid for OER instructional materials for a district based on PEIMS student enrollment data from the fall snapshot collection of the current school year.

Before PEIMS student enrollment data from the fall snapshot collection of the current school year is available, a district will have an expected allotment amount that is based on 90 percent of the PEIMS student enrollment data from the fall snapshot collection of the previous school year.

Funds may only be used for the costs incurred or for which a district is obligated to pay during the school year in which the aid is provided.

Requisitions

Requisitions for funding must be submitted in TEA's online requisition and disbursement system (EMAT) before August 31 of the fiscal year in which the aid is provided.

The entitlements for each year will be made available for district use through EMAT as early as possible in the fiscal year for which the funds have been appropriated.

Permissible Use of Additional State Aid

The additional state aid for OER instructional materials may be used to purchase:

1. OER instructional material placed on the list of approved materials outlined in Education Code 31.022, including any non-text components of the approved product, such as manipulative kits; and
2. OER instructional material components placed on the list of approved materials outlined in Education Code 31.022, only after an initial purchase of all components of the product.

The additional state aid for OER instructional materials may not be used to purchase or reimburse for:

1. Instructional material or material components not on the list of approved instructional materials;

2. Instructional material placed on the rejected list of instructional materials;

3. Instructional material that promotes three-cueing as defined in Education Code 28.0062(a-1); or

4. Printing of SBOE-approved OER material, which may be otherwise procured through a requisition in EMAT.

The commissioner may grant a waiver to exempt a district from an initial purchase of each component of an approved product if the district can demonstrate that it already possesses an identical or near-identical component for each student and/or teacher as indicated by the product design.

19 TAC 67.1004

Purchasing Method

A district is not required to use a method provided by Education Code 44.031(a) to purchase instructional materials that have been reviewed by TEA and included on the list of approved instructional materials maintained by the SBOE. *Education Code 31.102(d)*

Requisitions, Use, and Distribution

The board may delegate to an employee the authority to requisition, distribute, and manage the inventory of instructional materials, consistent with Education Code Chapter 31 and rules adopted under that chapter. *Education Code 31.104(a)*

Delegation of Authority

Local Funds

A district may use local funds to purchase any instructional materials in addition to those selected under Education Code Chapter 31. *Education Code 31.106*

Online Requisition Program

A district shall make a requisition for instructional materials using EMAT. A district may requisition instructional materials for grades above the grade level in which a student is enrolled. *Education Code 31.103(b)-(c)*

Distribution

The board shall distribute printed instructional materials to students in the manner that the board determines is most effective and economical. *Education Code 31.102(c)*

OER Instructional Materials

A district may adopt OER instructional material at any time. A district may only adopt or otherwise use an OER instructional material that is not included on the list of rejected instructional materials maintained by the SBOE.

Except as otherwise provided by the Education Code, the commissioner may not require a district to adopt or use an OER instructional material. A district may not be charged for a cost associated with the selection of an OER instructional material, except for the cost of printing copies of the material. *Education Code 31.073*

OER Transition Plan

To qualify for additional state aid under Education Code 48.308, the board must adopt an OER instructional material transition plan to assist classroom teachers in the district who will be using an OER instructional material in a specific subject or grade level for which the teacher has not previously used an OER instructional material.

The plan must ensure that OER instructional materials are used in a manner that maintains the instructional flexibility of a classroom teacher to address the needs of each student.

A district that participates in the program developed and maintained by TEA under Education Code 31.0752 is not required to adopt a transition plan under this provision. [See OER Instructional Material Support Program, below]

Education Code 31.0751

The OER instructional material transition plan shall be submitted in a format determined by the commissioner.

A district is required to have a locally maintained OER transition plan that complies with 19 Administrative Code 67.1315 to access funding allotted under Education Code 48.308.

A district is required to submit an OER instructional material transition plan only when:

1. First adopting an SBOE-approved OER product for a grade level or subject/course; or
2. Expanding implementation of an SBOE-approved OER product to additional campuses and/or grade levels.

The OER instructional material transition plan adopted by the board of trustees shall include the plan of the district to ensure the following:

1. Clear communication and stakeholder change management plans and timelines;
2. Timely access to print materials and related manipulatives through OER procurement and distribution;
3. Sufficient planning and instructional time evidenced by instructional calendars and master schedules aligned to the requirements of the materials;
4. Clear expectations for the implementation of:
    a. Instructional materials;

b. Internalization and student work analysis protocols; and

c. Curriculum-embedded assessments;

5. Processes for stakeholder communication and public posting, as outlined in Education Code 26.006, if materials have been modified by the district;

6. The maintenance of instructional flexibility through clear guidance for acceptable teacher modifications to instructional pacing, sequencing, and lesson content to address the needs of each student; and

7. Sufficient professional learning and development for school leaders, instructional coaches, and teachers, including:

a. Pre-service product onboarding and orientation; and

b. Ongoing, job-embedded, curriculum-based professional learning, including cycles of observation and feedback.

The commissioner may request and review OER instructional material transition plans before funding is released and reject a plan subsequent to review.

19 TAC 67.1315

OER Instructional Material Support Program

TEA shall develop and maintain a program to assist school districts in adopting and using OER instructional material, including by assisting districts to:

1. Maintain the instructional flexibility of classroom teachers to address the needs of each student; and

2. Schedule instructional periods in a manner that allows classroom teachers sufficient time to effectively prepare and present instructional material within the teacher's normal work day.

TEA shall engage in efforts to meet the demand from districts that request assistance for the 2024-25 or 2025-26 school year. Until September 1, 2027, a school district may apply assistance received to offset the payment of costs related to implementing OER instructional material, regardless of whether the district incurred the cost before receiving the assistance.

Education Code 31.0752

Requisition

A district that selects OER instructional material shall requisition a sufficient number of printed copies for use by students unable to access the instructional material electronically unless the district provides to each student:

1. Electronic access to the instructional material at no cost to the student; or

2. Printed copies of the portion of the instructional material that will be used in the course.

Education Code 31.103(d)

Parent Portal

An entity that hosts an instructional materials parent portal must comply with requests regarding parental access to the portal made by a district in compliance with Education Code 31.154 or Education Code 26.006 [see EFA]. *Education Code 31.154(e)*

[For more information regarding the requirements for certain entities that supply instructional materials to host a parent portal, see Education Code 31.154.]

Bilingual Instructional Materials

A district shall purchase with its allotment or otherwise acquire instructional materials for use in bilingual education classes. *Education Code 31.029*

Certification of Instructional Materials

Prior to the beginning of each school year, a district shall submit to the SBOE and commissioner certification that the district:

1. For each subject in the required curriculum under Education Code 28.002, other than physical education, and each grade level:

    a. Provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE for that subject and grade level; and

    b. In the provision of instructional materials, the district protects students from obscene or harmful content as necessary for compliance with the Children's Internet Protection Act (Pub. L. No. 106-554) [see CQ], Education Code 28.0022 [see EMB], Penal Code 43.22, and any other law or regulation that protects students from obscene or harmful content [see EFA]; and

2. The district used money allocated to the district or school under the instructional materials and technology allotment only for purposes allowed under Education Code 31.0211.

To determine whether each student has instructional materials that cover all elements of the essential knowledge and skills, a district may consider:

1. Instructional materials adopted by the SBOE;

2. Instructional materials developed, purchased, or otherwise acquired by the district; and

3. OER instructional materials and other electronic instructional materials included in the repository under Education Code 31.0722.

Education Code 31.1011

Annual Report

Each district shall annually report to TEA information regarding the instructional materials used by the district during the previous school year, including the cost of each material. *Education Code 31.1012*

Ownership

Except as otherwise provided, a student must return all instructional materials to the teacher at the end of the school year or when the student withdraws from school. At the end of the school year for which OER instructional material that a district does not intend to use for another student is distributed, the printed copy of the OER instructional material becomes the property of the student to whom it is distributed.

This provision does not apply to an electronic copy of OER instructional material.

Education Code 31.104(c), (g)-(h)

Responsibility for Instructional Materials and Equipment

Each student or the student's parent or guardian is responsible for all instructional material and technological equipment not returned in an acceptable condition by the student. A student who fails to return in an acceptable condition all instructional materials and technological equipment forfeits the right to free instructional materials and technological equipment until all instructional materials and technological equipment previously issued but not returned in an acceptable condition are paid for by the student, parent, or guardian.

As provided by board policy, a district may waive or reduce the payment required if the student is from a low-income family. [See FP] The district shall allow the student to use instructional materials and technological equipment at school during each school day.

If instructional materials or technological equipment is not returned in an acceptable condition or paid for, a district may withhold the student's records. A district may not prevent the student from graduating, participating in a graduation ceremony, or receiving a diploma. [See FL and GBA regarding student and parental right to access records; and FD, FFAB, and FL regarding a district's duties to provide records to another district]

The board may not require an employee of the district who acts in good faith to pay for instructional materials or technological equipment that is stolen, misplaced, or not returned by a student. [See DG]

These provisions do not apply to an electronic copy of OER instructional material.

Education Code 31.104(d), (e), (h) [See also EFA]

Acceptable Condition

Printed instructional materials are considered to be in acceptable condition if:

1. The cover, binding, pages, spine, and all integral components of the instructional materials are wholly intact and the instructional materials are fully usable by students; and
2. No component of the instructional materials is soiled, torn, or damaged (whether intentionally or by lack of appropriate care) to the extent that any portion of the content is too disfigured or obscured to be fully accessible to other students.

Electronic instructional materials are considered to be in acceptable condition if:

1. All components or applications that are a part of the electronic instructional materials are returned;
2. The electronic materials perform as they did when they were new;
3. The electronic instructional materials do not contain computer code (e.g., bug, virus, worm, or similar malicious software) that has been designed to self-replicate, damage, change, or otherwise hinder the performance of any computer's memory, file system, or software; and
4. The electronic instructional materials have not been installed with plug-ins, snap-ins, or add-ins without the prior approval of the district.

Technological equipment is considered to be in acceptable condition if:

1. The equipment is returned with the software and hardware in their original condition unless the district authorized changes; and
2. The physical condition of the equipment is fully usable as it was originally intended to be used.

19 TAC 66.1310

Lost or Damaged Instructional Materials	A district may order replacements for instructional materials that have been lost or damaged directly from the publisher of the instructional materials or any source for a printed copy of OER instructional material. *Education Code 31.104(b)*
Sale or Disposal	The board shall determine how the district will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment.
Sale	The board may sell printed instructional materials on the date the instructional material is discontinued for use in the public schools by the SBOE or the commissioner. The board may also sell electronic instructional materials and technological equipment owned by the district.
Use of Proceeds	Any funds received by a district from a sale must be used to purchase instructional materials and technological equipment allowed under Education Code 31.0211.
Disposal	The board may dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the SBOE if the board determines that the instructional material is not needed by the district and the board does not reasonably expect that the instructional material will be needed. A district must notify the commissioner of any instructional material the district disposes of under this provision. *Education Code 31.105*

Definitions

For purposes of this policy:

1. "Bus" means a motor vehicle used to transport persons and designed to accommodate more than 10 passengers, including the operator.
2. "Passenger car" means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator.
3. "Passenger van" means a motor vehicle, other than a motorcycle or passenger car, used to transport persons and designed to transport 15 or fewer passengers, including the driver.
4. "School activity bus" means a bus designed to accommodate more than 15 passengers, including the operator, that is owned, operated, rented, or leased by a district and is used to transport public school students on a school-related activity trip, other than on routes to and from school. The term does not include a chartered bus, a bus operated by a mass transit authority, a school bus, or a multifunction school activity bus.
5. "School bus" means a motor vehicle that was manufactured in compliance with the federal motor vehicle safety standards for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students on a route to and from school or on a school-related activity trip other than on routes to and from school. The term does not include a school-chartered bus or a bus operated by a mass transit authority.
6. "Motor bus" means a vehicle designed to transport more than 15 passengers, including the driver.

Education Code 34.003(d), (e); Transp. Code 541.201(3)(A), (12), (15), (16)

Authority

A board may establish and operate an economical public school transportation system:

1. In the district;
2. Outside the district, if the district enters into an interlocal contract as provided by Government Code Chapter 791; or
3. Outside the district if students enrolled in the district reside outside the district and the district:
    a. Has an active policy adopted by the board that prohibits screening transfer students who reside outside the dis-

trict based on the student's academic performance, disciplinary history, or attendance record, regardless of any relevant district or innovation plan adopted by the board or authorization to screen transfer students under any other authority; and

b. Certifies that the district has:

(1) An overall performance rating of C or higher under Education Code 39.054 for the preceding school year or the most recent school year in which a performance rating was assigned;

(2) An overall accountability score of 70 or higher for the preceding school year or the most recent school year in which a performance rating was assigned as calculated by the Texas Education Agency (TEA) for purposes of determining the district's overall performance rating under Education Code 39.054; and

(3) The same or better overall performance rating under Education Code 39.054 for the preceding school year or the most recent school year in which a performance rating was assigned as the district from which the district will transport students under these provisions.

A district shall make publicly available on the district's internet website information regarding the district's compliance with the requirements under item 3 above.

Education Code 34.007 may not be construed to prohibit a board from operating a transportation system in another district to ensure the most efficient routes for transporting students who reside in the operating district.

Education Code 34.007(a), (a-1), (c)

Transportation Allotment for Eligible Students

Each district operating a regular transportation system is entitled to an allotment based on a rate per mile per regular eligible student set by the legislature in the General Appropriations Act. *Education Code 48.151(c)*

"Regular eligible student" means a student who resides two or more miles from the student's campus of regular attendance, measured along the shortest route that may be traveled on public roads, and who is not classified as a student eligible for special education services; or is a homeless child or youth, as defined by 42 U.S.C. 11434a. *Education Code 48.151(b)(1)*

The commissioner of education may not reduce the allotment because a district provides transportation for an eligible student to and from a child-care facility or a grandparent's residence instead of the student's residence, as authorized by Education Code 34.007 [see Designation of Child-Care Facility or Grandparent's Residence, below]. *Education Code 48.151(k)*

Authorized Uses

Funds allotted under these provisions must be used in providing transportation services. Transporting a meal or instructional materials as provided below is included in transportation services under this provision. *Education Code 48.151(h)*

Meals and Instructional Materials

For the duration of a declared disaster, a district located in an area that is wholly or partly the subject of a disaster declaration by the governor under Government Code Chapter 418 or by the president of the United States may be reimbursed on a per-mile basis for the cost of transporting a meal or instructional materials to a student's residence or to another location, designated by the district, for pickup by the student. *Education Code 48.151(n)*

Fees for Transportation

For information regarding fees a district may charge for transportation, see FP(LEGAL).

Hazardous Conditions or High Risk of Violence

A district may apply for and on approval of the commissioner receive an additional amount of up to 10 percent of its regular transportation allotment to be used for the transportation of children living within two miles of the school they attend who would be subject to hazardous traffic conditions or a high risk of violence if they walked to school. *Education Code 48.151(d); 19 TAC 61.1016*

Definitions

"Hazardous traffic condition" means an area within two miles of a campus where no walkway is provided and children must walk along or cross a freeway or expressway, an underpass, an overpass or a bridge, an uncontrolled major traffic artery, an industrial or commercial area, or another comparable condition.

"Area presenting a high risk of violence" means an area within two miles of a campus that law enforcement records indicate presents a high incidence of violent crimes.

19 TAC 61.1016(b)

Community Walking Transportation Programs

A district may use all or part of any additional funds received to support community walking transportation programs, including walking school bus programs, provided that the district requires each supported program to submit a financial report each semester that covers services provided by the program for the benefit of the district. *Education Code 48.151(d-2)*

Eligibility

A district or county is eligible to report hazardous area service annual mileage in the Foundation School Program (FSP) transportation application if the district submits to the TEA a policy adopted by the board that:

1. Explains the specific hazardous traffic conditions or areas presenting high risk for violence that apply to the district and exist within two miles of its campuses; and

2. If a district elects to implement community walking transportation programs or innovative school safety projects, requires such district-supported community walking transportation programs or innovative school safety projects to:

    a. Utilize trained adults with current background checks to either walk students to their home or school or to stand guard along safe routes; and

    b. Provide financial reports to the district each semester.

19 TAC 61.1016(c)

Reporting

A district is required to submit a hazardous area policy prior to the start of the school year and to report annual hazardous area service mileage by August 1 of each school year on the home-to-school/school-to-home section of the FSP transportation route services report. Districts requesting funds for an area presenting a high risk of violence must provide to TEA, contemporaneously with the explanation required at Eligibility above, consolidated law enforcement records that document violent crimes identified by reporting agencies within the relevant jurisdiction. *19 TAC 61.1016(d)*

Career and Technology Program

The cost of transporting career and technology education students from one campus to another inside a district, from a sending district to another secondary public school for a career and technology program or an area career and technology school or to an approved postsecondary institution under a contract for instruction approved by TEA, or from a district campus to a location at which students are provided work-based learning under the district's career and technology program shall be reimbursed based on the number of actual miles traveled times the district’s official extracurricular travel per mile rate as set by the board and approved by TEA. *Education Code 48.151(f)*

Special Transportation Services

A school or county that provides special transportation services for eligible special education students is entitled to a state allocation at a rate per mile equal to the sum of the rate per mile set under Education Code 48.151(c) and $0.13, or a greater amount provided by appropriation. Districts may use a portion of their support allocation to pay transportation costs, if necessary. The commissioner may

grant an amount set by appropriation for private transportation to reimburse parents or their agents for transporting eligible special education students. The mileage allowed shall be computed along the shortest public road from the student's home to school and back, morning and afternoon. The need for this type of transportation shall be determined on an individual basis and shall be approved only in extreme hardship cases. *Education Code 48.151(g)*

Dual Credit Students

A district shall be reimbursed on a per-mile basis for the cost of transporting a dual credit student to another campus in the district, a campus in another district, or a postsecondary educational institution for purposes of attending the course, if the course is not available at the student's campus. *Education Code 48.151(m)*

Bus Drivers

In establishing and operating the transportation system, the board shall employ bus drivers certified in accordance with standards and qualifications adopted by the Department of Public Safety. *Education Code 34.007(b)(1)*

Bus Operation

A person may not operate a school bus if:

1. The door of the school bus is open; or
2. The number of passengers on the bus is greater than the manufacturer's design capacity for the bus.

An operator of a school bus, while operating the bus, shall prohibit a passenger from:

1. Standing in the bus; or
2. Sitting on the floor of the bus or in any location that is not designed as a seat.

Transp. Code 545.426

Transporting Students to School

School buses or mass transit authority buses shall be used for the transportation of students to and from schools on routes having 10 or more students. Passenger cars may be used on routes having fewer than 10 students. *Education Code 34.003(a)*

Bus Passes or Cards

A school district may use the state transportation allotment to provide a bus pass or card for another transportation system to each student who is eligible to use the regular transportation system of the district but for whom the regular transportation system of the district is not a feasible method of providing transportation. *Education Code 48.151(l)*

Designation of Child-Care Facility or Grandparent's Residence

On determining eligibility for transportation services, the board shall allow a parent to designate one of the following locations instead of the child's residence as the regular location for purposes of obtaining transportation under the system to and from the child's school, if the location is an approved stop on an approved route:

1. A child-care facility as defined by Human Resources Code 42.002 below; or
2. The residence of a grandparent of the child.

Education Code 34.007(b)(2)

"Child-care facility" means a facility licensed, certified, or registered by the Department of Family and Protective Services to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers. *Human Resources Code 42.002(3)*

Transportation of Homeless Students

As a condition of receiving funds under the McKinney-Vento Homeless Assistance Act, a district shall adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, at the request of the homeless liaison [see FFC]) to and from the school of origin, as follows:

1. If the child continues to live in the area served by the district in which the school of origin is located, the district of origin will provide the child's transportation to and from the school of origin.
2. If the child's living arrangements in the area served by the district of origin terminate and the child, though continuing his or her education in the school of origin, begins living in an area served by another district, the district of origin and the district in which the child is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the districts are unable to agree, the responsibility and costs shall be shared equally.

42 U.S.C. 11432(g)(1)(J)(iii)(I), (II) [See FDC]

Transportation of Students in Foster Care

A district receiving Title 1, Part A funds must collaborate with the state or local child welfare agency to develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best inter-

est will be provided, arranged, and funded for the duration of the time in foster care. These procedures shall:

1. Ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with 42 U.S.C. 675(4)(A); and

2. Ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the district will provide transportation to the school of origin if:

   a. The local child welfare agency agrees to reimburse the district for the cost of such transportation;

   b. The district agrees to pay the cost of transportation; or

   c. The district and the local welfare agency agree to share the cost of such transportation.

20 U.S.C. 6312(c)(5) [See FD]

School Activities

When transporting students in connection with school activities other than on routes to and from school:

1. Only school buses or motor buses may be used to transport 15 or more students; and

2. Passenger cars or passenger vans may be used to transport fewer than 15 students.

Education Code 34.003(b)

In all circumstances in which passenger cars or passenger vans are used to transport students, the operator of the vehicle shall ensure that the number of passengers does not exceed the designed capacity of the vehicle and that each passenger is secured by a safety belt. *Education Code 34.003(c)*

Accelerated Instruction Programs

For more information regarding transportation of students to accelerated instruction programs, see EHBCA.

Transportation Company or System

A board may contract with a mass transit authority, commercial transportation company, or juvenile board for all or any part of a district's public school transportation if the authority, company, or board:

1. Requires its school bus drivers to have the qualifications required by and to be certified in accordance with standards established by the Department of Public Safety; and

2. Uses only those school buses or mass transit authority buses in transporting 15 or more students that meet or exceed safety standards for school buses established under Education Code 34.002.

A mass transit authority contracting under this provision for daily transportation of pre-primary, primary, secondary students to or from school shall conduct, in a manner and on a schedule approved by the board, the following education programs:

1. A program to inform the public that public school students will be riding on the authority's or company's buses;

2. A program to educate drivers of the buses to be used under the contract of the special needs and problems of public school students riding on the buses; and

3. A program to educate public school students on bus riding safety and any special considerations arising from the use of the authority's or company's buses.

A board may supplement the state transportation cost allotment with local funds necessary to provide complete transportation services.

Education Code 34.008

[For provisions pertaining to criminal history record information on contractors providing transportation services, see CJA(LEGAL).]

Safety Standards

A district shall meet or exceed the safety standards for school buses established by the Department of Public Safety (DPS), with the advice of the Texas Education Agency (TEA). A district that fails or refuses to meet these safety standards for school buses is ineligible to share in the transportation allotment until the first anniversary of the date the district begins complying with the safety standards. *Education Code 34.002; Transp. Code 547.102; 37 TAC 14.51-.52*

Student Safety

Prohibitions

A district may not require or allow a child to stand on a moving bus or passenger van. *Education Code 34.004*

An operator of a school bus, while operating the bus, shall prohibit a passenger from:

1. Standing in the bus; or
2. Sitting:
    a. On the floor of the bus, or
    b. In any location on the bus that is not designed as a seat.

Transp. Code 545.426

Seat Belts

Required on Buses

By September 1, 2029, a bus, including a school bus, a school activity bus, multifunction school activity bus, or school-chartered bus, operated by or contracted for use by a district for the transportation of schoolchildren shall be equipped with a three-point seat belt for each passenger, including the operator. This requirement does not apply to:

1. A bus operated by or contracted for use by a school district if the board determines that the district's budget does not permit the district to purchase a bus that is equipped with the required seat belts; or
2. A bus for which the warranty would become void if the bus were equipped to comply with the requirement.

A district may accept gifts, grants, and donations from any public or private source to implement the requirements.

Transp. Code 547.701(e), (h)

Required Report

Not later than the end of the 2025-26 school year, a board that makes the determination above shall submit to TEA and present in a public meeting of the board a report that includes:

1. The number of buses operated by or contracted for use by the district that:

a. Are not equipped with seat belts;

b. Are equipped with two-point seat belts; and

c. Are equipped with three-point seat belts; and

2. The estimated cost to the district to equip with three-point seat belts each bus operated by or contracted for use by the district that is not equipped with three-point seat belts as required.

Transp. Code 547.701(f)

Student Requirement

A district shall require a student riding a bus operated by or contracted for operation by the district to wear a seat belt if the bus is equipped with seat belts for all passengers on the bus. A school district may implement a disciplinary policy to enforce the use of seat belts by students. *Education Code 34.013*

Donations

A board shall consider any offer made by a person to donate three-point seat belts or money for the purchase of three-point seat belts for a district's school buses. A board may accept or decline the offer after adequate consideration.

A board may acknowledge a person who donates three-point seat belts or money for the purchase of three-point seat belts for a school bus by displaying a small, discreet sign on the side or back of the bus recognizing the person who made the donation. The sign may not serve as an advertisement for the person who made the donation.

Education Code 34.014

Use of Warning Signals

When a school bus is being stopped or is stopped on a highway to permit students to board or exit the bus, the operator of the bus shall activate all flashing warning signal lights and other equipment on the bus designed to warn other drivers that the bus is stopping to load or unload children.

A person may not operate a light or other equipment described above except when a school bus is being stopped or is stopped on a highway to:

1. Permit a student to board or exit the bus; or

2. Distribute to a student or the parent or guardian of a student:

a. Food; or

b. Technological equipment for use by the student for educational purposes.

Transp. Code 547.701(c), (c-1)

Wireless Communication Devices

General Rule

An operator commits an offense if the operator uses a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped. *Transp. Code 545.4251(b)*

School Property

An operator may not use a wireless communication device while operating a motor vehicle within a school crossing zone or on the property of a public elementary, middle, junior high, or high school served by a school crossing zone, during the time a reduced speed limit is in effect for the school crossing zone, unless:

1. The vehicle is stopped; or
2. The wireless communication device is used with a hands-free device.

Transp. Code 545.4252

An operator may not use a wireless communication device while operating a school bus or passenger bus with a minor passenger on the bus unless the bus is stopped. This provision does not apply to an operator of a school bus or passenger bus using a wireless communication device in the performance of the operator's duties as a bus driver and in a manner similar to using a two-way radio. *Transp. Code 545.425(c), (e-1)*

Definitions

"Hands-free device" means speakerphone capability, a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication device or in a motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands, except to activate or deactivate a function of the wireless communication device or hands-free device. The term includes voice-operated technology and a push-to-talk function. *Transp. Code 545.425(a)(1)*

"Electronic message" means data that is read from or entered into a wireless communication device for the purpose of communicating with another person. *Transp. Code 545.4251(a)(1)*

Disruption of Transportation

Any person other than a primary or secondary grade student who intentionally disrupts, prevents, or interferes with the lawful transportation of students to and from school on a vehicle owned or operated by a district or to or from activities sponsored by a school on a vehicle owned and/or operated by a district shall be guilty of a

misdemeanor. It is an exception to the application of the offense that, at the time the person engaged in the prohibited conduct, the person was younger than 12 years of age. *Education Code 37.126*

Exhibition of Firearm

For information regarding offenses pertaining to firearms on buses, see GKA(LEGAL).

Collision Reports

Notice to DPS for Buses With Advertising

A district shall provide DPS written notification of any collision directly or indirectly involving a school bus operated by or for the district that bears advertising or another paid announcement. *37 TAC 14.65(a)(2)* [See CNB for rules related to school bus advertising.]

Notice must be received not more than five days from the date of the collision and shall include the following:

1. The name and address of the owner of the school bus;
2. The name and driver's license number of the school bus operator;
3. The date of the collision;
4. The city or county where the collision occurred; and
5. The investigating police agency.

37 TAC 14.65(c)

Notices to DPS may be delivered by facsimile, electronic mail, or mailed to School Bus Transportation, Texas Department of Public Safety, P.O. Box 4087, Austin, TX 78773-0525. *37 TAC 14.65(d)*

Annual Report to TEA

A district shall report annually to TEA the number of collisions in which its buses were involved in the past year in a manner prescribed by the commissioner of education. A district shall file annual collision reports to TEA only in the period beginning July 1 and ending July 31 and shall include the following information in the report:

1. The total number of bus collisions;
2. The date each collision occurred;
3. The type of bus, as specified in 19 Administrative Code 103.1231(a), involved in each collision;
4. Whether the bus involved in each collision was equipped with seat belts and, if so, the type of seat belts;
5. The number of students and adults involved in each collision;
6. The number and types of injuries that were sustained by the bus passengers in each collision; and

7. Whether the injured passengers in each collision were wearing seat belts at the time of the collision and, if so, the type of seat belts.

A school district shall report a bus collision involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

1. The bus is owned, leased, contracted, or chartered by a school district and was transporting school district personnel, students, or a combination of personnel and students; or

2. The bus was driven by a school district employee or by an employee of the school district's bus contractor with no passengers on board and the collision involved a pedestrian.

Exceptions

A school district shall not report a bus collision involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

1. The bus was driven by a school district employee or by an employee of the school district's bus contractor, the collision occurred when no passenger other than the school district's driver or bus contractor's driver was on board the bus, and the collision did not involve a pedestrian; or

2. The collision involved a bus chartered by a school district for a school activity trip and no school district personnel or students were on board the bus at the time of the collision.

A school district shall not report a collision that occurred in a vehicle that is owned, contracted, or chartered by a school district and is not a school bus, a multifunction school activity bus, a school activity bus, or a motor bus.

Education Code 34.015(b); 19 TAC 103.1231(b)

Free and Reduced-Price Meals

The school food authority (SFA) must ensure that lunches and afterschool snacks are made available free or at a reduced-price to all children who are determined by the SFA to be eligible for such benefits. The determination of a child's eligibility for free or reduced-price lunches and afterschool snacks must be made in accordance with 7 C.F.R. Part 245. *7 C.F.R. 210.23(a)* [For information regarding participation in the School Breakfast Program (SBP), see 7 C.F.R. 220.7 and School Meals Program Options, below.]

[For the definition of “school food authority,” see COA(LEGAL).]

Eligibility Appeals

Each local educational agency (LEA) of a school participating in the National School Lunch Program (NSLP), SBP, or the Special Milk Program (7 C.F.R. Part 215) or of a commodity-only school shall establish a hearing procedure under which:

1. A family can appeal from a decision made by the LEA with respect to an application the family has made for free or reduced-price meals or for free milk, and
2. The LEA can challenge the continued eligibility of any child for a free or reduced-price meal or for free milk. The hearing procedure shall provide for both the family and the local educational agency:
    a. A simple, publicly announced method to make an oral or written request for a hearing;
    b. An opportunity to be assisted or represented by an attorney or other person;
    c. An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal;
    d. That the hearing shall be held with reasonable promptness and convenience, and that adequate notice shall be given as to the time and place of the hearing;
    e. An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;
    f. An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;
    g. That the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

h. That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

i. That the parties concerned and any designated representative shall be notified in writing of the decision of the hearing official;

j. That a written record shall be prepared with respect to each hearing, which shall include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the parties concerned of the decision of the hearing official; and

k. That the written record of each hearing shall be preserved for a period of three years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.

7 C.F.R. 245.7

"Local Educational Agency" — "Local educational agency" means a public board of education legally constituted within a state for administrative control or direction of public elementary schools or secondary schools in a school district. *7 C.F.R. 245.2*

Claims for Reimbursement

Internal Controls — The school food authority shall establish internal controls which ensure the accuracy of meal counts prior to the submission of the monthly claim for reimbursement under the NSLP or the SBP, as applicable. At a minimum, these internal controls shall include an on-site review of the meal counting and claiming system employed by each school within the jurisdiction of the SFA; comparisons of daily free, reduced-price, and paid meal counts against data which will assist in the identification of meal counts in excess of the number of free, reduced-price, and paid meals served each day to children eligible for such meals; and a system for following up on those meal counts which suggest the likelihood of meal counting problems. *7 C.F.R. 210.8(a), 220.11(a)*

On-Site Reviews — Every school year, each SFA with more than one school shall perform no less than one on-site review of the counting and claiming system and the readily observable general areas of review cited under 7 C.F.R. 210.18(h) [regarding general areas of review by the Texas Department of Agriculture (TDA)] for each school under its jurisdiction under the NSLP, and for a minimum of 50 percent of

schools under its jurisdiction with every school being reviewed at least once every two years under the SBP.

The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures or general review areas, the SFA shall ensure that the school implements corrective action and, within 45 days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problems. Each on-site review shall ensure that the school's claim is based on the counting system and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price, and paid meals, respectively, served for each day of operation.

7 C.F.R. 210.8(a)(1), 220.11(d)(1)

Nondiscrimination and Confidentiality

Nondiscrimination

In the operation of the program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or disability. SFAs shall comply with the requirements of:

1. Title VI of the Civil Rights Act of 1964,
2. Title IX of the Education Amendments of 1972,
3. Section 504 of the Rehabilitation Act of 1973,
4. The Age Discrimination Act of 1975,
5. The U.S. Department of Agriculture (USDA) regulations on nondiscrimination (7 C.F.R. Parts 15, 15a, and 15b), and
6. Food and Nutrition Service (FNS) Instruction 113-1.

7 C.F.R. 210.23(b)

Note: FNS Instruction 113-1,[1] USDA posters[2] and nondiscrimination statement[3] for use by SFAs for all FNS programs, and other information may be found on the USDA FNS Civil Rights website.[4] For information on handling civil rights complaints, see TDA's Food and Nutrition Division *Administrator's Reference Manual*,[5] Section 3, *Civil Rights & Confidentiality*.

SFAs participating in the NSLP, SBP, Special Milk Program, or commodity-only schools shall take all actions that are necessary to ensure compliance with the following nondiscrimination practices for children eligible to receive free and reduced-price meals or free milk:

1. The names of the children shall not be published, posted or announced in any manner;
2. There shall be no overt identification of any of the children by the use of special tokens or tickets or by any other means;
3. The children shall not be required to work for their meals or milk;
4. The children shall not be required to use a separate dining area, go through a separate serving line, enter the dining area through a separate entrance or consume their meals or milk at a different time; and
5. When more than one lunch or breakfast or type of milk is offered which meets the requirements prescribed in applicable federal regulations, the children shall have the same choice of meals or milk that is available to those children who pay the full price for their meal or milk.

7 C.F.R. 245.8

Confidentiality

The use or disclosure of any information obtained from an application for free or reduced-price meals, or from a state or local agency referred to in 7 U.S.C. 1758(b)(3)(F), (4), or (5) shall be limited in accordance with section 9 of the Richard B. Russell National School Lunch Act. *42 U.S.C. 1758(b)(6); 7 C.F.R. 245.6(f)-(j)*

Unauthorized Disclosure or Misuse of Information

In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than $1,000 or imprisoned for up to one year, or both. *7 C.F.R. 245.6(k)*

Prohibition on Certain Additives

A school district that provides free or reduced-price meals to eligible students under Education Code 33.901 (Free Breakfast, below), the national school breakfast program, or the national school lunch program may not provide as part of a free or reduced-price meal any food that contains the following substances:

1. Brominated vegetable oil (BVO);
2. Potassium bromate;
3. Propylparaben;
4. Azodicarbonamide;
5. Butylated hydroxyanisole (BHA);
6. Red 3 (CAS 16423-68-0);

7. Red 40 (CAS 25956-17-6);
8. Yellow 5 (CAS 1934-21-0);
9. Yellow 6 (CAS 2783-94-0);
10. Blue 1 (CAS 3844-45-9);
11. Blue 2 (CAS 860-22-0);
12. Green 3 (CAS 2353-45-9);
13. Citrus red 3 (CAS 6358-53-8);
14. Orange B (CAS 15139-76-1);
15. INS No. 150c/ammonia caramel (Class III);
16. INS No. 150d/sulfite ammonia caramel (Class IV);
17. Titanium dioxide; or
18. Any additive that is substantially similar to an additive specified above.

A district that receives a waiver under Education Code 7.056 is not in violation of this prohibition.

Education Code 33.9011

School Meals Program Options

If at least 10 percent of the students enrolled in one or more schools in a district are eligible for free or reduced-price breakfasts under the national school breakfast program provided for by the Child Nutrition Act of 1966 (42 U.S.C. 1773), the board shall either:

1. Participate in the national program and extend its benefits to all eligible students in the school or schools; or
2. Develop and implement a locally funded program to provide free meals, including breakfast and lunch, to each student eligible for free meals under federal law and reduced-price meals, including breakfast and lunch, to each student eligible for reduced-price meals under federal law, provided that the reduced price may not exceed the maximum allowable rate under federal law.

A district is permitted to participate in the national program at one or more campuses in the district and provide a locally funded program at one or more other campuses in the district.

Free Breakfast

A campus participating in the national school breakfast program or providing a locally funded program in which 80 percent or more of the students qualify under the national program for a free or reduced-price breakfast shall offer a free breakfast to each student.

Waiver

The commissioner of education shall grant a waiver of the free breakfast requirement, not to exceed one year, to a campus if the board votes to request the waiver at the board's annual meeting to discuss and adopt the budget and the proposed tax rate under Education Code 44.044. Before voting to request a waiver, the board shall list the waiver as a separate item for consideration on the meeting's agenda and provide an opportunity for public comment regarding the waiver at the meeting.

Education Code 33.901

Summer Nutrition Program

Unless the Texas Department of Agriculture (TDA) grants a district a waiver, a district in which 50 percent or more of the students are eligible to participate in the national free or reduced-price lunch program under 42 U.S.C. Section 1751 et seq. shall provide or arrange for the provision of a summer nutrition program for at least 30 days during the period in which district schools are recessed for the summer. *Agriculture Code 12.0029(b)*

"Summer nutrition program" means the Summer Food Service Program under 42 U.S.C. 1761. The term includes the seamless summer option under 42 U.S.C. 1761(a)(8). *Agriculture Code 12.0029(a)(2)*

Notice from TDA

Not later than October 31 of each year, TDA shall notify each qualifying district of the district's responsibility concerning provision of a summer nutrition program during the next period in which school is recessed for the summer. *Agriculture Code 12.0029(c)*

Notice to TDA

Each district that receives a notice from TDA shall, not later than January 31 of the year following the year in which the notice was received, inform TDA in writing that the district intends to provide or arrange for the provision of a summer nutrition program during the next period in which district schools are recessed for the summer; or request in writing that TDA grant the district a waiver of the requirement. *Agriculture Code 12.0029(e)*

Required Documentation

A district that arranges for the provision of a summer nutrition program must enter into an agreement to partner or collaborate with a local governmental entity, educational institution, or private nonprofit organization to ensure meal service for children in the district's attendance area and must provide TDA with written documentation of the arrangement no later than April 1 of each year. *4 TAC 25.601(b)*

Waiver

Not later than November 30 of each year, the board of a district that intends to request a waiver must send written notice of the district's intention to the district's local school health advisory council. The notice must include an explanation of the district's reason for

requesting a waiver of the requirement. *Agriculture Code 12.0029(d)*

TDA may grant a district a one-year waiver of the requirement to provide or arrange for the provision of a summer nutrition program only if:

1. The district has worked with the TDA field offices to identify another possible provider for the program in the district, and the district provides documentation, verified by TDA, showing that:
    a. There are fewer than 100 children in the district currently eligible for the national free or reduced-price lunch program;
    b. Transportation to enable district students to participate in the program is an insurmountable obstacle to the district's ability to provide or arrange for the provision of the program despite consultation by the district with public transit providers;
    c. The district is unable to provide or arrange for the provision of a program due to renovation or construction of district facilities and the unavailability of an appropriate alternate provider or site; or
    d. The district is unable to provide or arrange for the provision of a program due to another specified extenuating circumstance and the unavailability of an appropriate alternate provider or site; or
2. The cost to the district to provide or arrange for provision of a program would be cost-prohibitive, as determined by TDA using the criteria and methodology established by TDA rule.

Agriculture Code 12.0029(f); 4 TAC 25.601(d), (e)

Alternate Provider

If a district has requested a waiver and has been unable to provide to TDA a list of possible providers for the summer nutrition program, the TDA field offices shall continue to attempt to identify an alternate provider for the district's summer nutrition program. *Agriculture Code 12.0029(i)*

Community Eligibility Provision

The community eligibility provision (CEP) is an alternative reimbursement option for eligible high-poverty districts. Each CEP cycle lasts up to four years before the LEA or school is required to recalculate their reimbursement rate. LEAs and schools have the option to recalculate sooner, if desired. An LEA may elect this provision for all of its schools, a group of schools, or an individual school.

Participating LEAs must offer free breakfasts and lunches for the length of their CEP cycle, not to exceed four successive years, to all children attending participating schools and receive meal reimbursement based on claiming percentages, as described in 7 C.F.R. 245.9(f)(4)(v). *7 C.F.R. 245.9(f); 42 U.S.C. 1759a(a)(1)(F)*

To be eligible to participate in the CEP, an LEA, group of schools, or school must:

1. Have an identified student percentage of at least 25 percent, as of April 1 of the school year prior to participating in the CEP, unless otherwise specified by the USDA Food and Nutrition Service (FNS). Individual schools participating in a group may have less than 25 percent identified students, provided that the average identified student percentage for the group is at least 25 percent.

2. Participate in the NSLP and SBP for the duration of the four-year cycle. Schools that operate on a limited schedule, where it is not operationally feasible to offer both lunch and breakfast, may elect CEP with FNS approval.

3. Comply with the procedures and requirements specified in 7 C.F.R. 245.9(f)(4) to participate in the CEP.

7 C.F.R. 245.9(f)(3)

[For information on other special assistance certification and reimbursement alternatives, see 7 C.F.R. 245.9.]

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[1] FNS Instruction 113-1 document: https://www.fns.usda.gov/cr/fns-instruction-113-1
[2] USDA FNS "And Justice for All" posters: https://www.nifa.usda.gov/equal-opportunity-civil-rights/equal-opportunity-and-civil-rights-resources
[3] USDA nondiscrimination statement: https://www.fns.usda.gov/civil-rights/usda-nondiscrimination-statement-other-fns-programs
[4] USDA FNS Civil Rights website: https://www.fns.usda.gov/civil-rights
[5] TDA's Food and Nutrition Division *Administrator's Reference Manual*: https://squaremeals.org/Programs/NationalSchoolLunchProgram/PolicyARM.aspx

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

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

Availability of Access

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

Limited Personal Use

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

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

Use by Members of the Public

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

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

Acceptable Use

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

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

Internet Safety

The Superintendent shall develop and implement an internet safety plan to:

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

Filtering

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

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

Monitored Use

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

Disclaimer of Liability

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

Record Retention

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

Electronically Signed Documents

At the District's discretion, the District may make certain transactions available online, including student admissions documents,

student grade and performance information, contracts for goods and services, and employment documents.

To the extent the District offers transactions electronically, the District may accept electronic signatures in accordance with this policy.

When accepting electronically signed documents or digital signatures, the District shall comply with rules adopted by the Department of Information Resources, to the extent practicable, to:

- Authenticate a digital signature for a written electronic communication sent to the District;
- Maintain all records as required by law;
- Ensure that records are created and maintained in a secure environment;
- Maintain appropriate internal controls on the use of electronic signatures;
- Implement means of confirming transactions; and
- Train staff on related procedures as necessary.

Personal Recording Devices

The following restrictions apply to the use of personal recording devices in District facilities and during school-related activities. Personal recording devices include personal camera phones, cameras, audio/tape recorders, video recorders, and any other electronic device that is capable of recording the human voice or image.

Protection of Confidential Information

Employees, including student workers, shall be prohibited from using recording devices to duplicate confidential information, including student records, personnel records, and medical records.

Restrooms and Other Private Locations

Employees, students, and visitors shall be prohibited from using recording devices in restrooms, locker rooms, dressing rooms, and other locations where people have a reasonable expectation of privacy.

Restriction on Use by Employees

Employees shall be prohibited from using recording devices at any District facility or during work-related activities and meetings, except as permitted for instructional purposes or as approved by administration.

Secret Recording Prohibited

Secret operation of personal recording devices by employees and students while on District property shall be prohibited. This includes, but is not limited to, the use of personal recording devices concealed on or within an individual’s person, clothing, or belong-

	ings. In addition, parents of students shall be prohibited from concealing personal recording devices on or within a student's person, clothing, or belongings.
Notification of Criminal Penalty	Employees, students, and parents are hereby notified that it is a crime under the Texas Penal Code to record a conversation to which one is not a party.
Discipline	Violations of the personal recording device policy may result in discipline, including termination or expulsion.

District Information Required on Website

A district that at any time on or after January 1, 2019, maintained a publicly accessible internet website shall post on a publicly accessible website the following information:

1. The district's contact information, including a mailing address, telephone number, and email address;
2. Each member of the board;
3. The date and location of the next election for board members [see BB series];
4. The requirements and deadline for filing for candidacy of board member, which shall be continuously posted for at least one year before the election day for the office [see BB series];
5. Each notice of a meeting of the board under Government Code Chapter 551, Subchapter C [see BE]; and
6. Each record of a meeting of the board under Government Code 551.021 [see BE].

Items 5 and 6 above do not apply to a district with a population of less than 5,000 in the district's boundaries and located in a county with a population of less than 25,000.

Gov't Code 2051.201

Note: See GBA regarding the confidentiality of certain board member information.

Required Trustee Information

Each district that maintains an internet website shall post on the website the name, email address, and term of office, including the date the term began and the date the term expires, of each member of the district's board of trustees. If a district does not maintain an internet website, the district shall submit the information required above to the Texas Education Agency (TEA). On receipt of the district's information, TEA shall post the information on TEA's internet website.

Not later than the 30th day after a new person is sworn in as a member of a district's board, the district shall update the information required above and, as applicable, post the updated information on the district's internet website or submit the updated information to TEA for posting on TEA's internet website.

A district shall annually submit to TEA the information required above for each member of the district's board of trustees. The in-

formation must identify the member designated as chair and be updated as required.

Education Code 11.1518

Note: The following is an index of website posting requirements that are addressed in the legal reference material of the policy manual. The list is not all-inclusive. The list does not address postings that are required in response to a specific incident or postings required under special circumstances.

Required Website Postings

The following posting requirements apply to a district that maintains an internet website:

1. A board may not vote on adoption of a proposed local innovation plan unless the final version of the proposed plan has been available on the district website for at least 30 days, under Education Code 12A.005(a)(1) and 19 Administrative Code 102.1307(a)(1). [See AF]

2. A district designated as a district of innovation shall ensure that a copy of its current local innovation plan is available to the public by posting and maintaining the plan in a prominent location on the district's website, under Education Code 12A.0071(a) and 19 Administrative Code 102.1305(e), .1307(f). [See AF]

3. Not later than 30 days after an accreditation status of accredited-warned, accredited-probation, or not accredited-revoked is assigned, a district must post notice on the home page of its website with a link to the required notification under 19 Administrative Code 97.1055(f), and maintain this until the district is assigned the accredited status. [See AIA]

4. A district with a local accountability system must produce a campus scorecard and make available on the district website an explanation of the methodology used to assign local accountability performance ratings, under 19 Administrative Code 97.1003(g). [See AIA]

5. A board shall disseminate its Texas Academic Performance Report (TAPR) by posting it on the district website under 19 Administrative Code 97.1008(f). [See AIB]

6. Not later than the 10th day after the first day of instruction of each school year, a district shall make available each campus report card, the district's performance report, the district's accreditation status and performance rating, and a definition and

explanation of each accreditation status, under Education Code 39.362. [See AIB]

7. A district shall post its annual federal report card under 20 U.S.C. 6311(h)(2). [See AIB]

8. A district or campus assigned a rating of D that qualifies under Education Code 39.0543(b) must notify the public of the meeting for input for the development of a local improvement plan 15 days prior to the meeting by way of the district and campus website, under 19 Administrative Code 97.1061(b)(3)(A)(ii). [See AIC]

9. A campus intervention team must notify the public of the meeting for input for the development of a targeted improvement plan 15 days prior to the meeting by way of the district and campus website, under 19 Administrative Code 97.1061(e)(3)(A)(ii) and Education Code 39A.056. [See AIC]

10. A district shall post a targeted improvement plan for a campus assigned an unacceptable performance rating on its website before the board hearing on the plan under Education Code 39A.057(b). [See AIC]

11. A district shall notify stakeholders of their ability to review the completed campus turnaround plan and post the completed plan on the district website at least 30 days before the final plan is submitted to the board of trustees, under 19 Administrative Code 97.1064(e). [See AIC]

12. A district shall post an election notice required under Election Code 85.007. [See BBBA]

13. A district shall post election information under Election Code 4.009. [See BBBA]

14. Each day early voting is conducted, the district shall post the branch daily register under Election Code 85.072. [See BBBA]

15. A district shall post early voting rosters under Election Code 87.121. [See BBBA]

16. A district shall post election results under Election Code 65.016. [See BBBB]

17. A district shall post the minutes of the last regular board meeting held before an election of trustees if the minutes reflect that a trustee is deficient in meeting the trustee's training requirement, under Education Code 11.159(b) and 19 Administrative Code 61.1(j). [See BBD]

18. A district shall post a report filed with the district by a candidate, board member, or specific-purpose committee pursuant to Election Code Chapter 254 not later than the 10th business day after it is received under Election Code 254.0401. [See BBBC]

19. A district shall provide access to the conflicts disclosure statements and questionnaires under Local Government Code 176.009. [See BBFA, CHE]

20. A district shall post the statements regarding activities to support and promote student health under Education Code 28.004. [See BDF]

21. A district must post notice of school health advisory council (SHAC) meetings under Education Code 28.004(d-1). [See BDF]

22. A district must post the minutes and audio or video recording of each SHAC meeting under Education Code 28.004(d-2). [See BDF]

23. A board must post notice of a board meeting and, if the district contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more, the board must also post the agenda for a board meeting under Government Code 551.056. [See BE]

24. A district that has a student enrollment of 10,000 or more shall post the archived recording, or a link thereto, of its meetings under Government Code 551.128(b-1). [See BE]

25. Notice at least seven days before the date on which a meeting is held to discuss the certification of compliance with certain laws as required by Education Code 39.008. [See BJA]

26. A district conducting a bond election shall post the election order, the election notice, the contents of the proposition, and any sample ballot under Election Code 4.003(f). [See CCA]

27. A district conducting a bond election shall post the voter information document beginning not later than the 21st day before election day and ending on the day after the election, under Government Code 1251.052(d). [See CCA]

28. A district issuing capital appreciation bonds shall post the information required by Government Code 1201.0245. [See CCA]

29. A district shall post prominently a notice informing property owners of the property tax database maintained by the appraisal district under Tax Code 26.17. [See CCG]

30. Not later than 30 days before the date of an election to approve a tax rate, a district must post the results of an efficiency audit under Education Code 11.184. [See CCG]

31. A district shall include on the home page of its website the prescribed statement if the district increases the amount of taxes to fund maintenance and operation expenditures under Tax Code 26.05(b). [See CCG]

32. A district shall maintain a link to the area of the comptroller's website where information on each of the district's agreements to limit appraised value, if any, is maintained, under Tax Code 313.0265(c). [See CCGB]

33. A district shall post a summary of its proposed budget concurrently with publication of the proposed budget under Education Code 44.0041. [See CE]

34. In the format prescribed by the comptroller, a district shall post or cause to be posted tax rate and budget information under Tax Code 26.18. [See CE]

35. A district shall maintain its adopted budget on the district's website until the third anniversary of the date the budget was adopted, under Education Code 44.0051. [See CE]

36. A district shall continuously post its contact information and Annual Local Debt Report under Local Government Code 140.008 and 34 Administrative Code 10.1-.6 on its website until the district posts the next annual report, or, as an alternative, the district may continually maintain a link to the comptroller's website where the district's financial information may be viewed. [See CFA]

37. A district shall post each severance agreement entered into with an employee or independent contractor in a prominent place on its website as required by Local Government Code 180.011. [See CJ, DEA]

38. Prior to conducting an active threat exercise, a district must provide adequate notice of the exercise through multiple distribution networks, including the district's website, under 19 Administrative Code 103.1211(b)(1). [See CKB]

39. A district must make available information regarding its compliance with requirements related to the transportation of stu-

dents enrolled in the district who reside outside the district, under Education Code 34.007. [See CNA]

40. A district that does not participate in the uniform group health insurance program (TRS ActiveCare) shall post its comparability report, together with the policy or contract for the group health coverage plan, under Education Code 22.004(d). [See CRD]

41. A district that is a service provider seeking to limit liability under the Digital Millennium Copyright Act must post information regarding its designated agent under 17 U.S.C. 512(c)(2). [See CY]

42. A district shall post its employment policy and any regulations referenced under Education Code 11.1513(a). [See DC]

43. A district shall post the board's employment policies under Education Code 21.204(d). [See DCB]

44. The board shall make publicly available in a prominent location on the district's website procedures for resolving grievances; standardized forms for filing a grievance, a notice of appeal, or a request for a hearing; and the method by which a grievance may be filed electronically under Education Code 26A.003. [See DGBA, FNG, GF]

45. The board shall adopt and post on the district's website early childhood literacy and mathematics plans that set specific annual goals under Education Code 11.185. [See EA]

46. The board shall post on the district's website and on the website, if any, of each campus the annual report of progress toward the goals set under the early childhood literacy and mathematics plans under Education Code 11.185. [See EA]

47. The board shall post on the district's website and on the website, if any, of each campus the annual report of progress toward the goals set under the college, career, and military readiness plans under Education Code 11.186. [See EA]

48. A district shall make available on the district's website at the beginning of each semester an instructional plan or course syllabus for each class offered in the district for that semester under Education Code 26.0062. [See EEP]

49. A district shall post on the home page of the district's website a notice stating that a parent of a student enrolled in the district is entitled to review instructional materials and may re-

quest that the district make the instructional materials available for review under Education Code 26.006(g). [See EFA]

50. If established, a local school library advisory council shall ensure that notice of the date, hour, place, and subject of its meetings are posted at least 72 hours before the meeting on the district's website, along with minutes and audio or video recording of the meetings as required by Education Code 33.025. [See EFB]

51. A district shall post on its website a form adopted by TEA to be used in making written challenges to library materials under Education Code 33.027. [See EFB]

52. A district shall post curriculum materials used in the district's human sexuality instruction or instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, if the materials are in the public domain, under Education Code 28.004(j). [See EHAA]

53. A district shall post the transition and employment guide for students enrolled in special education programs and their parents in order to provide information on statewide services and programs that assist in the transition to life outside the public school system, under Education Code 29.0112. [See EHBAD]

54. Each year, a district shall post a report on measurable outcomes for each dropout recovery education program offered by the district, under Education Code 29.081(e-6). [See EHBC]

55. A district shall make available on the district or campus website by November 1 of each school year a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education, under 19 Administrative Code 102.1003(h). [See EHBG]

56. Annually, a district shall post any agreement between the district and a public institution of higher education to provide a dual credit program, under Education Code 28.009(b-2). [See EHDD]

57. A district shall publish information from TEA under Education Code 28.02121 explaining the advantages of the distinguished level of achievement and each endorsement. [See EIF]

58. A district shall post the date the PSAT/NMSQT will be administered and the date any college advanced placement tests will be administered, under Education Code 29.916. [See EK]

59. A district that receives funds under Title 1, Part A shall post on its website and the website of each campus for each grade served, information on each assessment required by the state to comply with 20 U.S.C. 6311, other assessments required by the state, and assessments required district-wide, under 20 U.S.C. 6312(e)(2)(B). [See EKB]

60. A district shall post in a prominent location the form developed by TEA under Education Code 26.001(d)(4) for providing information about parental rights and options. [See FA]

61. A district shall post information regarding local programs and services, including charitable programs and services, available to assist students who are homeless, under Education Code 33.906. [See FDC]

62. A district shall prominently post information about required and recommended immunizations and procedures for claiming an exemption from immunization requirements under Education Code 38.019. [See FFAB]

63. Each school year, the board shall post a summary of the Guidelines for the Care of Students with Food Allergies at Risk for Anaphylaxis[1] on the district's website with instructions for obtaining access to the complete guidelines document, under Education Code 38.0151. [See FFAF]

64. A district must prominently display the contact information required to be listed for the Title IX Coordinator and policy on its website, if any, under 34 C.F.R. 106.8(b). [See FFH]

65. A district must make all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website, if any, under 34 C.F.R. 106.45(b)(10)(i)(D). [See FFH]

66. To the extent practicable, a district must post the procedure for reporting bullying established by the district's bullying policy, under Education Code 37.0832(e). [See FFI]

67. A district shall post on its website, for each district campus, the email address and dedicated phone number of the campus behavior coordinator under Education Code 26.015. [See FO]

68. If the board designates a method for making a written request for public information, other than mail, email, or hand-delivery, the board must include a statement that a request may be made by that method on its website under Government Code 552.234(b) unless the statement is on the sign required by Government Code 552.205. [See GBAA]

69. A board that allows requestors to use the public information request form created by the attorney general must post the form on the district website under Government Code 552.235. [See GBAA]

70. A district shall post on its website and each campus shall post on any campus website a notice regarding the district's ability to refuse entry or eject certain persons under Education Code 37.105 and 19 Administrative Code 103.1207(g), including the appeal process. [See GKA]

Optional Website Postings

A district that maintains an internet website has the following options:

1. A board may broadcast an open meeting over the internet, under Government Code 551.128. [See BE]

2. A district may make its proposed budget clearly accessible on the home page of the district's website instead of including a physical copy of the proposed budget with the notice of a meeting at which the board will discuss or adopt a budget under Government Code 551.043(c). [See BE, CCG]

3. A district may publish the superintendent's employment contract on the district's website instead of publishing it in the annual financial management report under 19 Administrative Code 109.1001(q)(3)(B)(i). [See CFA]

4. Notice of a vacant position for which a certificate or license is required may be provided by posting the position on the district's internet website, rather than on a bulletin board, under Education Code 11.1513. [See DC]

5. A district shall either post online or provide physical copies of the report on library materials under Education Code 35.006. [See EFB]

6. A district may place on its internet website a current copy of the procedural safeguards notice regarding special education and related services, under 34 C.F.R. 300.504(b). [See EHBAE]

7. A district may provide the annual notice to the parent of each student enrolled in grade 9 or above of the availability of subsidies for certain exam fees and the availability and enrollment qualifications for programs under which a student may earn college credit and career and technology education programs or other work-based education programs in the district, under Education Code 28.010. [See EHDD]

8. A board may post a mailing address and email address designated for receiving written requests for public information on its website under Government Code 552.234(d). [See GBAA]

Geospatial Data Products

"Geospatial data product" means a document, computer file, or internet website that contains geospatial data; a map; or information about a service involving geospatial data or a map. *Gov't Code 2051.101(1)*

Notice

A district shall include a notice on each geospatial data product that:

1. Is created or hosted by the district;

2. Appears to represent property boundaries; and

3. Was not produced using information from an on-the-ground survey conducted by or under the supervision of a registered professional land surveyor or land surveyor authorized to perform surveys under laws in effect when the survey was conducted.

The notice must be in substantially the following form: "This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries."

The notice may include language further defining the limits of liability of a geospatial data product producer; apply to a geospatial data product that contains more than one map; or for a notice that applies to a geospatial data product that is or is on an internet website, be included on a separate page that requires the person accessing the website to agree to the terms of the notice before accessing the geospatial data product.

Gov't Code 2051.102

Exemption

A district is not required to include the notice on a geospatial data product that:

1. Does not contain a legal description, a property boundary monument, or the distance and direction of a property line;

2. Is prepared only for use as evidence in a legal proceeding;

3. Is filed with the clerk of any court; or

4. Is filed with the county clerk.

Gov't Code 2051.103

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[1] TDSHS Guidelines for the Care of Students with Food Allergies at Risk for Anaphylaxis: https://www.dshs.texas.gov/sites/default/files/schoolhealth/pdf/FINAL%20Guidelines%20for%20Food%20Allergies%203.2023.pdf

Cybersecurity

Each district shall adopt a cybersecurity policy to:

Policy

1. Secure district cyberinfrastructure against cyber attacks and other cybersecurity incidents; and
2. Determine cybersecurity risk and implement mitigation planning.

A district's cybersecurity policy may not conflict with the information security standards for institutions of higher education adopted by the Texas Cyber Command under Government Code Chapters 2059 and 2063.

Cybersecurity Coordinator

The superintendent shall designate a cybersecurity coordinator to serve as a liaison between the district and the Texas Education Agency (TEA) in cybersecurity matters.

Cyber Attack or Cybersecurity Incident

Report to TEA

A district shall report to TEA or, if applicable, the entity that administers the system established by TEA in coordination with DIR under Education Code 11.175(g), any cyber attack or other cybersecurity incident against the district's cyberinfrastructure that constitutes a breach of system security as soon as practicable after the discovery of the attack or incident.

Report to Parent

The district's cybersecurity coordinator shall provide notice to a parent of or person standing in parental relation to a student enrolled in the district of an attack or incident for which a report is required to TEA involving the student's information.

Definitions

Breach of System Security

"Breach of system security" means an incident in which student information that is sensitive, protected, or confidential, as provided by state or federal law, is stolen or copied, transmitted, viewed, or used by a person unauthorized to engage in that action.

Cyber Attack

"Cyber attack" means an attempt to damage, disrupt, or gain unauthorized access to a computer, computer network, or computer system.

Cybersecurity

"Cybersecurity" means the measures taken to protect a computer, computer network, or computer system against unauthorized use or access.

Education Code 11.175(a)-(f)

Training

Requirements

At least once each year, each employee and each elected or appointed official of a district shall complete a cybersecurity training program certified under Government Code 2063.102 (state-certified cybersecurity training programs). *Gov't Code 2063.103(a)*

Notwithstanding Government Code 2063.103 above, only the district's cybersecurity coordinator is required to complete the cyber-

security training on an annual basis. Any other school district employee required to complete the cybersecurity training shall complete the training as determined by the district, in consultation with the district's cybersecurity coordinator. *Education Code 11.175(h-1)*

Denial of Access

The board or the board's designee may deny access to the district's computer system or database to an employee or official of the district who the board or the board's designee determines is noncompliant with the training requirements. *Gov't Code 2063.103(a-2)*

Exceptions

The requirements above do not apply to employees and officials who have been:

1. Granted military leave;
2. Granted leave under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.);
3. Granted leave related to a sickness or disability covered by workers' compensation benefits, if that employee or official no longer has access to the district's information resources or information resources technologies;
4. Granted any other type of extended leave or authorization to work from an alternative work site if that employee or official no longer has access to the district's information resources or information resources technologies; or
5. Denied access to a district's information resources or information resources technologies for noncompliance with the training requirements above.

Gov't Code 2063.103(g)

Program

The board may select the most appropriate state-certified cybersecurity training program for employees and board members of the district to complete. The board shall:

1. Verify and report on the completion of a cybersecurity training program by district employees and board members to the Cyber Command; and
2. Require periodic audits to ensure compliance with these provisions.

Gov't Code 2063.103(c)

Security Breach Notification

To Individuals

A district that owns, licenses, or maintains computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made without unreasonable delay and in each case not later than the 60th day after the date on which the district determines that the breach occurred, except as provided at Criminal Investigation Exception, below, or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

Resident of Other State

If the individual whose sensitive personal information was or is reasonably believed to have been acquired by an unauthorized person is a resident of a state that requires a person that owns or licenses computerized data to provide notice of a breach of system security, the notice of the breach of system security required under Notice, below, may be provided under that state's law or under Notice, below.

To the Owner or License Holder

A district that maintains computerized data that includes sensitive personal information not owned by the district shall notify the owner or license holder of the information of any breach of system security immediately after discovering the breach, if the sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

Notice

A district may give the required notice to individuals or the owner or license holder by providing:

1. Written notice at the last known address of the individual;
2. Electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001 (electronic records and signatures); or
3. If the district demonstrates that the cost of providing notice would exceed $250,000, the number of affected persons exceeds 500,000, or the district does not have sufficient contact information, by:
    a. Electronic mail, if the district has electronic mail addresses for the affected persons;
    b. Conspicuous posting of the notice on the district’s website; or
    c. Notice published in or broadcast on major statewide media.

Information Security Policy

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

To the Attorney General

A district that is required to disclose or provide notification of a breach of system security under these provisions shall notify the attorney general of that breach as soon as practicable and not later than the 30th day after the date on which the district determines that the breach occurred if the breach involves at least 250 residents of this state. The notification must be submitted electronically using a form accessed through the attorney general's internet website and must include:

1. A detailed description of the nature and circumstances of the breach or the use of sensitive personal information acquired as a result of the breach;
2. The number of residents of this state affected by the breach at the time of notification;
3. The number of affected residents that have been sent a disclosure of the breach by mail or other direct method of communication at the time of notification;
4. The measures taken by the district regarding the breach;
5. Any measures the district intends to take regarding the breach after the notification described at Notice, above; and
6. Information regarding whether law enforcement is engaged in investigating the breach.

To a Consumer Reporting Agency

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

Criminal Investigation Exception

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

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

Definitions

For purposes of security breach notifications, the following definitions apply:

Breach of System Security

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

Sensitive Personal Information

"Sensitive personal information" means:

1. An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
    a. Social security number;
    b. Driver's license number or government-issued identification number; or
    c. Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or
2. Information that identifies an individual and relates to:
    a. The physical or mental health or condition of the individual;
    b. The provision of health care to the individual; or
    c. Payment for the provision of health-care to the individual.

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

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

Cybersecurity Incident Notification

"Cybersecurity incident" includes:

1. A breach or suspected breach of system security as defined by Business and Commerce Code 521.053, above;

2. The introduction of ransomware, as defined by Penal Code 33.023, into a computer, computer network, or computer system; or

3. Any other cybersecurity-related occurrence that jeopardizes information or an information system designated by command policy adopted under this chapter.

"Sensitive personal information" has the meaning assigned by Business and Commerce Code 521.002, above.

Gov't Code 2063.001(6), (12)

A district that owns, licenses, or maintains computerized data that includes sensitive personal information, confidential information, or information the disclosure of which is regulated by law shall, in the event of a cybersecurity incident:

1. Comply with the notification requirements of Business and Commerce Code 521.053 [see Security Breach Notification, above];

2. Not later than 48 hours after the discovery of the cybersecurity incident, notify:

   a. Cyber Command, including the chief information security officer; or

   b. If the cybersecurity incident involves election data, the secretary of state; and

3. Comply with all Cyber Command rules relating to reporting cybersecurity incidents.

Not later than the 10th business day after the date of the eradication, closure, and recovery from a cybersecurity incident, a district shall notify Cyber Command, including the chief, of the details of the cybersecurity incident and include in the notification an analysis of the cause of the cybersecurity incident.

Contract language in a cybersecurity insurance contract or other contract for goods or services prohibiting or restricting a district's compliance with or otherwise circumventing these requirements is void and unenforceable.

Gov't Code 2063.302

Cybersecurity Information Sharing Act

A district may, for a cybersecurity purpose and consistent with the protection of classified information, share with, or receive from, any other non-federal entity or the federal government a cyber threat indicator or defensive measure in accordance with the Cybersecu-

rity Information Sharing Act, 6 U.S.C. Subchapter I (sections 1501-1510). *6 U.S.C. 1503(c)*

Removal of Personal Information

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

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

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

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

Definitions

For purposes of the Cybersecurity Information Sharing Act, the following definitions apply:

Cybersecurity Purpose

"Cybersecurity purpose" means the purpose of protecting an information system or information that is stored on, processed by, or transiting an information system from a cybersecurity threat or security vulnerability. *6 U.S.C. 1501(4)*

Cybersecurity Threat

"Cybersecurity threat" means an action, not protected by the First Amendment to the United States Constitution, on or through an information system that may result in an unauthorized effort to adversely impact the security, availability, confidentiality, or integrity of an information system or information that is stored on, processed by, or transiting an information system. The term does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement. *6 U.S.C. 1501(5)*

Cyber Threat Indicator

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

1. Malicious reconnaissance, as defined in 6 U.S.C. 1501(12), including anomalous patterns of communications that appear to be transmitted for the purpose of gathering technical information related to a cybersecurity threat or security vulnerability;

2. A method of defeating a security control or exploitation of a security vulnerability;

3. A security vulnerability, including anomalous activity that appears to indicate the existence of a security vulnerability;

4. A method of causing a user with legitimate access to an information system or information that is stored on, processed by, or transiting an information system to unwittingly enable the defeat of a security control or exploitation of a security vulnerability;

5. Malicious cyber command and control, as defined in 6 U.S.C. 1501(11);

6. The actual or potential harm caused by an incident, including a description of the information exfiltrated as a result of a particular cybersecurity threat;

7. Any other attribute of a cybersecurity threat, if disclosure of such attribute is not otherwise prohibited by law; or

8. Any combination thereof.

6 U.S.C. 1501(6)

Defensive Measure — "Defensive measure" means an action, device, procedure, signature, technique, or other measure applied to an information system or information that is stored on, processed by, or transiting an information system that detects, prevents, or mitigates a known or suspected cybersecurity threat or security vulnerability. The term does not include a measure that destroys, renders unusable, provides unauthorized access to, or substantially harms an information system or information stored on, processed by, or transiting such information system not owned by the private entity operating the measure or another entity that is authorized to provide consent and has provided consent to that private entity for operation of such measure. *6 U.S.C. 1501(7)*

Information System — "Information system" has the meaning given the term in 44 U.S.C. 3502 and includes industrial control systems, such as supervisory control and data acquisition systems, distributed control systems, and programmable logic controllers. *6 U.S.C. 1501(9)*

Security Control — "Security control" means the management, operational, and technical controls used to protect against an unauthorized effort to adversely affect the confidentiality, integrity, and availability of an information system or its information. *6 U.S.C. 1501(16)*

Security Vulnerability — "Security vulnerability" means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control. *6 U.S.C. 1501(17)*

Plan

The District shall develop a cybersecurity plan to secure the District's cyberinfrastructure against a cyberattack or any other cybersecurity incidents, determine cybersecurity risk, and implement appropriate mitigation planning.

Coordinator

The Superintendent shall designate a cybersecurity coordinator. The cybersecurity coordinator shall serve as the liaison between the District and the Texas Education Agency in cybersecurity matters.

Training

The Board delegates to the Superintendent the authority to:

1. Determine the cybersecurity training program to be used in the District;
2. Verify and report compliance with training requirements in accordance with guidance from the Texas Cyber Command; and
3. Remove access to the District's computer systems and databases for noncompliance with training requirements as appropriate.

The District shall complete periodic audits to ensure compliance with the cybersecurity training requirements.

Security Breach and Cybersecurity Incident Notifications

Upon discovering or receiving notification of a breach of system security or a cybersecurity incident, as defined by law, the District shall disclose the breach or incident to affected persons or entities and provide any other notices in accordance with the time frames established by law. The District shall give notice by using one or more of the following methods:

1. Written notice.
2. Email, if the District has email addresses for the affected persons.
3. Conspicuous posting on the District's websites.
4. Publication through broadcast media.

The District shall disclose a breach or incident involving sensitive, protected, or confidential student information as required by law.

Definitions

"Artificial intelligence system" means a machine-based system that for explicit or implicit objectives infers from provided information a method to generate outputs, such as predictions, content, recommendations, or decisions, to influence a physical or virtual environment with varying levels of autonomy and adaptiveness after deployment.

"Consequential decision" means a decision that has a material legal or similarly significant effect on the provision, denial, or conditions of a person's access to a government service.

"Controlling factor" means a factor that is the principal basis for making a consequential decision; or capable of altering the outcome of a consequential decision.

"Heightened scrutiny artificial intelligence system" means an artificial intelligence system specifically intended to autonomously make, or be a controlling factor in making, a consequential decision. The term does not include an artificial intelligence system intended to:

1. Perform a narrow procedural task;
2. Improve the result of a previously completed human activity;
3. Perform a preparatory task to an assessment relevant to a consequential decision; or
4. Detect decision-making patterns or deviations from previous decision-making patterns.

"Principal basis" means the use of an output produced by a heightened scrutiny artificial intelligence system to make a decision without human review, oversight, involvement, or intervention; or meaningful consideration by a human.

Gov't Code 2054.003

Code of Ethics

The Department of Information Resources (DIR) by rule shall establish an artificial intelligence system code of ethics for use by districts that procure, develop, deploy, or use artificial intelligence systems.

At a minimum, the artificial intelligence system code of ethics must include guidance for the deployment and use of artificial intelligence systems and heightened scrutiny artificial intelligence systems that aligns with the Artificial Intelligence Risk Management Framework (AI RMF 1.0) published by the National Institute of Standards and Technology.

A district shall adopt the code of ethics.

Gov't Code 2054.702

Minimum Standards for Heightened Scrutiny AI Systems

DIR shall develop minimum risk management and governance standards for the development, procurement, deployment, and use of heightened scrutiny artificial intelligence systems by a district.

The minimum standards must be consistent with the Artificial Intelligence Risk Management Framework (AI RMF 1.0) published by the National Institute of Standards and Technology.

A district shall adopt the standards.

Gov't Code 2054.703

Review of Heightened Scrutiny AI

A district shall complete a review of the deployment and use of heightened scrutiny artificial intelligence systems and, on request, provide the review to the DIR in the manner it prescribes. *Gov't Code 2054.0965(c)*

Standardized Notice

A district deploying or using an artificial intelligence system that is public-facing or that is a controlling factor in a consequential decision shall include a standardized notice on all related applications, websites, and public computer systems.

DIR shall develop a form that districts must use.

Gov't Code 2054.711

Prohibition on Social Scoring

A district may not use or deploy an artificial intelligence system that evaluates or classifies a natural person or group of natural persons based on social behavior or personal characteristics, whether known, inferred, or predicted, with the intent to calculate or assign a social score or similar categorical estimation or valuation of the person or group of persons that results or may result in:

1. Detrimental or unfavorable treatment of a person or group of persons in a social context unrelated to the context in which the behavior or characteristics were observed or noted;
2. Detrimental or unfavorable treatment of a person or group of persons that is unjustified or disproportionate to the nature or gravity of the observed or noted behavior or characteristics; or
3. The infringement of any right guaranteed under the U.S. Constitution, the Texas Constitution, or state or federal law.

Business and Commerce Code 552.053

Prohibition on Capturing Biometric Data

"Biometric data" means data generated by automatic measurements of an individual's biological characteristics. The term includes a fingerprint, voiceprint, eye retina or iris, or other unique biological pattern or characteristic that is used to identify a specific individual. The term does not include a physical or digital photograph or data generated from a physical or digital photograph, a video or audio recording or data generated from a video or audio recording, or information collected, used, or stored for health care treatment, payment, or operations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.).

A district may not develop or deploy an artificial intelligence system for the purpose of uniquely identifying a specific individual using biometric data or the targeted or untargeted gathering of images or other media from the internet or any other publicly available source without the individual's consent, if the gathering would infringe on any right of the individual under the United States Constitution, the Texas Constitution, or state or federal law.

[See FFA for restrictions on the use of student biometric identifiers.]

Business and Commerce Code 552.054

Required Training

At least once each year, each employee and each elected or appointed official of a district shall complete an artificial intelligence training program certified under Government Code 2054.5193.

The board may select the most appropriate artificial intelligence training program certified for employees and officials of the district to complete.

The board shall:

1. Verify and report on the completion of an artificial intelligence training program by employees and officials of the district; and
2. Require periodic audits to ensure compliance.

The board or the board's designee may deny access to the district's computer system or database to an employee or official of the district who the board or designee determines is noncompliant with the training requirements.

Gov't Code 2054.5191

Notwithstanding Government Code 2054.5191 (transferred to Government Code 2063.103 by HB 150, 89th Legislative Session), only the district's cybersecurity coordinator is required to complete the artificial intelligence training on an annual basis. Any other

school district employee required to complete the artificial intelligence training shall complete the training as determined by the district, in consultation with the district's cybersecurity coordinator. *Education Code 11.175(h-1)*

Training

The Board delegates to the Superintendent the authority to:

1. Determine the artificial intelligence (AI) training program to be used in the District;
2. Verify and report compliance with training requirements in accordance with guidance from the Department of Information Resources; and
3. Remove access to the District's computer systems and databases for noncompliance with training requirements as appropriate.

The District shall complete periodic audits to ensure compliance with the AI training requirements.

Use in District

Employees and students shall be permitted to explore AI and implement its use in and out of the classroom in accordance with policy and administrative regulations. The use of AI shall only be as a support tool to enhance student outcomes and shall never take the place of teacher and student decision-making. Any use of AI must comply with law, policy, and administrative regulations relating to student and employee privacy and data security.

A student shall only use AI tools with teacher permission and shall be expected to produce original work and properly credit sources, including AI tools used in creating the work. Students who use AI tools to deceptively harm, bully, or harass others shall be disciplined in accordance with the Student Code of Conduct and policy. [See EIA(LOCAL), FFH, FFI, and the FO series]

Definitions

Participating Entity — "Participating entity" means an entity participating in the uniform group coverage program established under Insurance Code Chapter 1579.

Program — "Program" means the uniform group coverage program established under Insurance Code Chapter 1579 (TRS-ActiveCare).

Insurance Code 1579.002(5), (6)

Coverage Requirements

A district shall participate in the uniform group coverage program established under Insurance Code Chapter 1579 as provided by Subchapter D of that chapter. *Education Code 22.004(a)*

Districts with 500 or Fewer Employees — Each district with 500 or fewer employees is required to participate in the program. *Insurance Code 1579.151(a)*

Self-Funded Districts — Notwithstanding the above, a district otherwise subject to the requirement that, on January 1, 2001, was individually self-funded for the provision of health coverage to its employees may elect not to participate in the program. *Insurance Code 1579.151(b)*

Districts with More Than 500 Employees — A district with more than 500 employees may elect to participate in the program. A district that elects to participate shall apply for participation in the manner prescribed by TRS rule. *Insurance Code 1579.152*

TRS-ActiveCare

The Teacher Retirement System (TRS) shall implement and administer the uniform group coverage program described by Insurance Code Chapter 1579. TRS shall establish plans of group coverages for employees participating in the program and their dependents*. Insurance Code 1579.051, .101*

Eligibility — Participation in the program is limited to employees of participating districts who are full-time employees and to part-time employees who are participating members in TRS. *Insurance Code 1579.202(a)*

Full-Time Employees — A "full-time employee" is a participating member who:

1. Is currently employed by a district;
2. Is employed in a position that is eligible for membership in TRS; and
3. Is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Insurance Code Chapter 1551), or the State University Employees Uniform Insurance Benefits Act (Insurance Code Chapter 1601) or the Texas Public School Retired Employees Group Benefits Act (Insurance Code Chapter 1575, also known as TRS-Care).

An individual who is eligible to Medicare, and meets the criteria in 1 and 2, above, will be considered a full-time employee.

34 TAC 41.33(2)

Certain Part-Time Employees

A part-time employee of a district who is not a participating member in TRS is eligible to participate in the program only if the employee pays all of the premiums and other costs associated with the health coverage plan selected by the employee. *Insurance Code 1579.204*

A "part-time employee" is an individual who:

1. Is currently employed by a district for ten hours or more each week;

2. Is employed in a position that is not eligible for membership in TRS or is not eligible for membership in TRS because of a service or disability retirement; and

3. Is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Insurance Code Chapter 1551) or the State University Employees Uniform Insurance Benefits Act (Insurance Code Chapter 1601) or the Texas Public School Retired Employees Group Benefits Act (Insurance Code Chapter 1575, also known as TRS-Care).

An individual who is eligible to Medicare, and who meets the criteria of 1 and 2, above, will be considered a part-time employee.

34 TAC 41.33(6)

Alternative Group Health Coverage Prohibited

Notwithstanding any other law, a participating entity may not offer or make available to the entity's employees or their dependents group health coverage not provided under the program. *Insurance Code 1579.1045; 34 TAC 41.30(e)*

If, contrary to 34 Administrative Code 41.30(e) and Insurance Code 1579.1045, a participating entity offers alternative group health coverage, TRS may pursue remedies for noncompliance, including but not limited to removal from or denial of entry into TRS-ActiveCare. TRS may impose or pursue one or more remedies. The pursuit of one remedy does not constitute a waiver of any other remedy that TRS may have at law or equity. If TRS discovers that a participating entity is in violation of 34 Administrative Code 41.30(e) after the beginning of a plan year, in addition to any other available remedy, TRS will remove the entity from the program effective at the end of the month in which TRS discovers the situation; and it will be the entity's liability to procure alternative

coverage or provide other remedies for the employees and their dependents that lose coverage under these circumstances. *34 TAC 41.30(f)*

Participation Election

Effective September 1, 2022, a participating entity may elect to discontinue the entity's participation in the program by providing written notice to TRS not later than December 31 of the year preceding the first day of the plan year in which the election will be effective.

Election to Discontinue

A participating entity that elects to discontinue participation in the program may not elect to:

1. Participate in the program until the fifth anniversary of the effective date of the entity's election to discontinue participation; or

2. Discontinue the entity's participation after an election described by item 1 until the fifth anniversary of the effective date of that election.

Election to Continue

Effective September 1, 2022, an entity that elects to participate in the program shall provide written notice to TRS not later than December 31 of the year preceding the first day of the plan year in which the election will be effective. The entity may not elect to discontinue the entity's participation until the fifth anniversary of the effective date of the entity's election to participate.

Insurance Code 1579.155; 34 TAC 41.30

An eligible entity that submits a written election to participate in TRS-ActiveCare under 34 Administrative Code 41.30 must include with the notice of election the information specified in 34 Administrative Code 41.45. Written notices of election to participate in TRS-ActiveCare without the information required will be considered incomplete and will be denied by TRS. *34 TAC 41.45*

Election to Participate

An entity that discontinued participation in the program effective on September 1, 2022, may elect to participate in the program before the fifth anniversary of the effective date of the entity's election to discontinue participation in the program if the entity:

1. Provides written notice to TRS not later than December 31, 2025, of the entity's election to participate in the program effective beginning September 1, 2026; and

2. Complies with any other requirements established by TRS for program participation.

For the plan year beginning September 1, 2026, TRS shall impose a risk stabilization fee in an amount determined by TRS on the premiums of an entity that elects to participate.

An entity that elects to participate in the program in this way may not elect to discontinue participation until September 1, 2031.

Insurance Code 1579.1551

Optional Coverages

Education Code 22.004 does not preclude a district that is participating in the uniform group coverage program established under Insurance Code Chapter 1579 from entering into contracts to provide optional insurance coverages for district employees. *Education Code 22.004(j)*

Other Health Coverage Programs

A district that does not participate in the program shall make available to its employees group health coverage provided by a risk pool established by one or more districts under Local Government Code Chapter 172 (“authorized risk pool”), or under a policy of insurance or group contract issued by an insurer, a company subject to Insurance Code Chapter 842, or a health maintenance organization under Insurance Code Chapter 843.

Comparability

The coverage provided by a district that does not participate in the program must meet the substantive coverage requirements of Insurance Code Chapter 1251, Subchapter A, Chapter 1364, and Chapter 1366, Subchapter A, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. “Major medical treatment” means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under Insurance Code Chapter 1551 (Texas Employees Group Benefits Act).

The following factors shall be considered in determining whether the district's coverage is comparable to the basic health coverage specified above:

1. The deductible amount for service provided inside and outside of the network;
2. The coinsurance percentages for service provided inside and outside of the network;
3. The maximum amount of coinsurance payments a covered person is required to pay;
4. The amount of the copayment for an office visit;
5. The schedule of benefits and the scope of coverage;

6. The lifetime maximum benefit amount; and

7. Verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance (TDI) or is provided by an authorized risk pool or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

Education Code 22.004(b)

Financial Statement

A district that does not participate in the program may not contract with an insurer, a company subject to Insurance Code Chapter 842, or a health maintenance organization to issue a policy or contract under Education Code 22.004, or with any person to assist the district in obtaining or managing the policy or contract unless, before the contract is entered, the insurer, company, organization, or person provides the district with an audited financial statement showing the financial condition of the insurer, company, organization, or person. *Education Code 22.004(f)*

Small Employer Market Election

A district may elect to participate as a small employer without regard to the number of employees in the district. A district that makes this election is treated as a small employer under Insurance Code Chapter 1501 for all purposes.

A district that is participating in the uniform group coverage program established under Insurance Code Chapter 1579 may not participate in the small employer market under this provision and may not renew a health insurance contract obtained in accordance with this provision after the date on which the program of coverages provided under Chapter 1579 is implemented. This provision does not affect a contract for the provision of optional coverages not included in a health benefit plan under Insurance Code Chapter 1501.

Insurance Code 1501.009

Employee Election — Spouses

A district employee who is eligible for coverage under a large or small employer health benefit plan providing coverage to the district's employees and who is the spouse of another district employee covered under the plan may elect whether to be treated under the plan as an employee or as the dependent of the other employee. *Insurance Code 1501.0095*

Self-Funded Health-Care Plan

The board may establish a health-care plan for district employees and their dependents. In implementing the plan, the board shall establish a fund to pay, as authorized under the plan, all or part of the actual costs for hospital, surgical, medical, dental, or related health care incurred by employees or any dependent whose participation in the program is being supported by deductions from an em-

ployee's salary. Under the plan, the fund also may be used to pay the costs of administering the fund. The fund consists of money contributed by the district and money deducted from salaries of employees for dependent or employee coverage. Money for the fund may not be deducted from an employee's salary unless the employee authorizes the deduction in writing. The plan shall attempt to protect the district against unanticipated catastrophic individual loss, or unexpectedly large aggregate loss, by securing individual stop-loss coverage, or aggregate stop-loss coverage, or both, from a commercial insurer.

The board may amend or cancel the district's health-care plan at any regular or special board meeting. If the plan is canceled, any valid claim against the fund for payment of health-care costs resulting from illness or injury occurring during the time the plan was in effect shall be paid out of the fund. If the fund is insufficient to pay the claim, the costs shall be paid out of other available district funds.

Education Code 22.005

Compliance Report

Each district that does not participate in the program shall prepare a report addressing its compliance with Education Code 22.004. The report must be available for review, together with the policy or contract for the group health coverage plan, at the central administrative office of each campus in the district and be posted on the district's internet website if the district maintains a website, must be based on the district group health coverage plan in effect during the current plan year, and must include:

1. Appropriate documentation of:
    a. The district's contract for group health coverage with a provider licensed to do business in this state by TDI or an authorized risk pool; or
    b. A resolution of the board authorizing a self-insurance plan for district employees and of the district's review of district ability to cover the liability assumed;
2. The schedule of benefits;
3. The premium rate sheet, including the amount paid by the district and employee;
4. The number of employees covered by the health coverage plan offered by the district; and
5. Information concerning the ease of completing the report.

Education Code 22.004(d)

Cost of Coverage

The cost of coverage under the program shall be paid by the state, the district, and the employees in the manner provided by Insurance Code Chapter 1579, Subchapter F, below. *Education Code 22.004(c)*

TRS-ActiveCare

State Contribution

The state shall provide for each covered employee the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act. The state contribution shall be distributed through the school finance formulas under Education Code Chapters 48 and 49 and used by districts as provided by Education Code 48.275*. Insurance Code 1579.251(a)*

Employee Contribution

An employee covered by the program shall pay that portion of the cost of coverage selected by the employee that exceeds the amount of the state contribution and a district's contribution.

District Contribution

A district may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

Insurance Code 1579.253

A district shall make contributions for the program as provided by Insurance Code Chapter 1581. *Insurance Code 1579.252* [See District Required Minimum Effort, below]

Other Health Coverage Programs

The cost of coverage under a plan adopted by a district that does not participate in the program shall be shared by the employees and the district, using the contributions by the state described by Insurance Code Chapter 1579, Subchapter F. [See State Contribution, above] *Education Code 22.004(c)*

District Required Minimum Effort

A district shall, for each fiscal year, use to provide health coverage an amount equal to the number of participating employees of the district multiplied by $1,800. *Insurance Code 1581.052(a)*

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. [See DEA] *Education Code 22.103(a), (c)*

Use

An employee may use 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*

Written Election

Each 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. An election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. *Education Code 22.105*

Continuation Coverage

After Resignation

Notwithstanding any other law, an employee whose resignation is effective after the last day of an instructional year is entitled to participate or be enrolled in the uniform group coverage plan or the district's group health coverage through the earlier of:

1. The first anniversary of the date participation in or coverage under the uniform group coverage plan or the group health coverage was first made available to district employees for the last instructional year in which the employee was employed by the district; or

2. The last calendar day before the first day of the instructional year immediately following the last instructional year in which the employee was employed by the district.

If an employee's resignation is effective after the last day of an instructional year, the district may not diminish or eliminate the amount of a contribution available to the employee under Insurance Code Chapter 1581 [see District Required Minimum Effort, above] before the last date on which the employee is entitled to participation or enrollment.

Education Code 22.004(k), (l); 34 TAC 41.38

During Military Leave

An employee who is absent from a position of employment by reason of service in the uniformed services may elect to continue coverage under a health plan. The maximum period of coverage of such a person and the person's dependents shall be the lesser of:

1. The 24-month period beginning on the date on which the person's absence begins; or

2. The day after the date on which the person fails to apply for or return to a position of employment. [See DECB]

38 U.S.C. 4317(a)

During FMLA Leave

During any period of leave under the Family and Medical Leave Act (FMLA), a district shall maintain coverage under any group health plan for the duration of the leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. *29 U.S.C. 2614(c); 29 C.F.R. 825.209, .210, .213* [See also DECA]

Upon Termination or Other Qualifying Event (COBRA)

In accordance with regulations that the Secretary of Health and Human Services shall prescribe, each group health plan that is maintained by any state that receives funds under 42 U.S.C. Chapter 6A, by any political subdivision of such a state, or by any agency or instrumentality of such a state or political subdivision, shall provide, in accordance with 42 U.S.C. Chapter 6A, Subchapter XX, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan. *42 U.S.C. 300bb-1(a)*

[For more information on the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), see 42 U.S.C. 300bb-1 through 300bb-8.]

Note: See DEB for continuation benefits that are available to survivors of district peace officers under certain conditions.

Coverage of Preexisting Conditions

Notwithstanding any other law, group health benefit coverage provided by or offered through a district to its employees under any law other than the uniform group coverage program is subject to the requirements of Insurance Code Sections 1501.102–.105, which limit exclusion for preexisting conditions. This provision applies to all group health benefit coverage provided by or offered through a district to its employees, including a standard health benefit plan issued under Insurance Code Chapter 1507 and health and accident coverage provided through a risk pool established under Local Government Code Chapter 172. *Education Code 22.004(m)*

TRS-ActiveCare

Coverage provided under the uniform group coverage program may not be made subject to a preexisting condition limitation during the initial period of eligibility*. Insurance Code 1579.105*

Federal Law

A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any preexisting condition exclusion with respect to such plan or coverage. *42 U.S.C. 300gg-3(a)*

Privacy of Health Information

To the extent a district is a covered entity under the Administrative Simplification provisions of HIPAA (42 U.S.C. Chapter 7, Subchapter XI, Part C; 45 C.F.R. Parts 160, 162, 164), the district must maintain the privacy of protected health information in accordance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E.

Definitions

Covered Entity

"Covered entity" means:

1. A health plan;
2. A health-care clearinghouse; or
3. A health-care provider who transmits any health information in electronic form in connection with a transaction covered by 45 C.F.R. Subtitle A, Subchapter C.

45 C.F.R. 160.103

Protected Health Information

"Protected health information" means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any form or medium. "Protected health information" excludes individually identifiable health information:

1. In education records covered by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g. [See FL]
2. In records described at 20 U.S.C. 1232g(a)(4)(B)(iv) (medical treatment records on a student who is at least 18 years of age).
3. In employment records held by a covered entity in its role as employer.

45 C.F.R. 160.103

Table of Contents

State Standards for Construction on or After November 1, 2021 2
Applicability 2
Definitions 3
Implementation 3
Educational Adequacy 4
Administration 6
Certification of Compliance with Standards 7
Instructional Facility Space Standards 7
Construction Quality Standards 8
Safety and Security Standards 8
State Standards for Construction Before November 1, 2021 10
Definitions and Procedures 10
Certification of Design and Construction 10
Construction Quality 11
Fire Escapes 11
Accessibility 11
Review of Plans 12
Notice 13
Relocatable Educational Facility 13
Outdoor Lighting 13
Exceptions 13

Note: For information regarding construction of school facilities, see CV series.

In addition to the facility standards contained in this policy, additional requirements are set out in 19 Administrative Code 61.1036 and 61.1040.

All new facilities must meet the commissioner's standards for adequacy of school facilities to be eligible to be financed with state or local tax funds. *Education Code 46.008*

State Standards for Construction on or After November 1, 2021

Applicability

The school facilities standards established in 19 Administrative Code 61.1040 ("section 61.1040") shall apply to all district capital improvement projects as follows, regardless of the type of school facility or the type of construction delivery method used by the district.

1. A district capital improvement project of any type or size relating to a school facility subject to section 61.1040 must comply with applicable requirements established in section 61.1040(d), (e), (f), (j), and (k).

2. A project for new construction or major renovation at an instructional facility must comply with the requirements established in section 61.1040(d), (e), (f), (g), (j), and (k) and one of the methods required to demonstrate compliance with minimum space requirements established in section 61.1040(h) and (i).

3. A project for minor renovation at an instructional facility must comply with applicable requirements established in section 61.1040(d)(1), (e), (f), (j), and (k).

4. A project for new construction, major renovation, or minor renovation at a specialized instructional facility, noninstructional facility, or noninstructional specialized assembly facility must comply with applicable requirements established in section 61.1040(d)(1), (e), (f), (j), and (k).

5. A project for major renovation that includes minor scopes of work in an area of a school facility that is separate and distinct from the project scope of the major renovation may be performed as a part of a construction services contract for the major renovation without the minor scope of work becoming subject to the standards in section 61.1040(g), (h), or (i) if:

    a. The minor scopes of work would not, on a stand-alone basis, be considered a major renovation project; and

b. The cost of the minor scopes of work is included in the total cost of the project construction budget to determine the appropriate scope of work to be included in the project, as specified in section 61.1040(k)(1)(B).

19 TAC 61.1040(b)(1)

Definitions

The words and terms used in section 61.1040 shall have the meanings set out in section 61.1040(a).

Capital Improvement Project

Any school facility project consisting of new construction, major renovation, or minor renovation for which construction services are procured under Government Code Chapter 2269, in accordance with Education Code 44.031(a)(5). *19 TAC 61.1040(a)(4)* [See CV]

Implementation

The school facilities standards established in section 61.1040 shall apply to a capital improvement project for which at least one of the following has occurred on or after November 1, 2021:

1. A board adopts a fiscal year maintenance and operations budget where a capital improvement project title and a design or design and construction budget are delineated;

2. A board calls a bond election where one or more capital improvement project titles and design or design and construction budgets are delineated; or

3. A new contract or amendment to an existing contract for architectural services for new construction or a major renovation project or a contract for engineering services for a major renovation or minor renovation has been agreed to and signed and dated by both parties to the agreement.

19 TAC 61.1040(c)(1)

A district shall consider implementing the safety and security standards under section 61.1040(k) for any safety and security upgrades to an existing instructional facility that does not require compliance with section 61.1040. *19 TAC 61.1040(c)(4)*

Option for Actions Taken Before November 1, 2021

A board may elect to treat a capital improvement project, for which an action listed above was taken prior to November 1, 2021, under standards established in 19 Administrative Code 61.1036, below, or under the standards established in section 61.1040. If an election to comply with section 61.1040 is made by a board, the district and architect may mutually agree that the contract for design services may be adjusted and then must signify in writing that the project will become subject to the facilities standards established in section 61.1040 through an affirmative indication on the required certification form for the project or through some other written doc-

ument or addendum to the contract signifying election under section 61.1040 and any modifications to the contract terms agreed to by the parties.

If a board makes an election to comply with section 61.1036, it may still elect to comply with section 61.1040(k) (safety and security standards).

19 TAC 61.1040(c)(2)-(3)

Educational Adequacy

Long-Range Facility Plan

A district shall ensure that a capital improvement project subject to section 61.1040 complies with the requirements and standards as follows.

Elements

The long-range facility plan shall include all of the following elements that apply to the facility and project and must also be updated prior to commencement of construction to include the access control document required in section 61.1040(k)(1)(B):

1. Existing and proposed instructional programs at the project campus, including special education, dual language, course offerings, and partnerships;
2. The age and condition of all buildings and systems at the project campus;
3. History of completed capital improvement projects at the facility;
4. Site evaluation of the project campus, including, but not limited to, overall site; shape; useable land; suitability for intended use as well as planned improvements; adequate vehicular, pedestrian, and emergency access; queueing; parking; and site amenities;
5. The district's educational specifications;
6. The district's enrollment projections, maximum student enrollment of the facility, and the facility's maximum instructional capacity, if applicable; and
7. The noncompliance, partial compliance, or full compliance with each of the safety and security standards required in section 61.1040(k).

Process

The process of developing the long-range facility plan shall consider input from teachers, students, parents, taxpayers, and other district stakeholders.

Compliance

The requirement for a long-range facility plan is met when a district completes the long-range facility plan, presents it to the board, and

makes it available to the prime design professional for a capital improvement project. The long-range facility plan expires after five years from the date of the final plan presented to the board and must be updated prior to commencement of a subsequent capital improvement project. A long-range facility plan developed as part of a district-wide long-range facilities plan may be used to satisfy this requirement.

19 TAC 61.1040(d)(1)

Educational Specifications

A district shall ensure that a project for new construction and major renovation subject to section 61.1040 complies with the requirements and standards as follows.

Elements

Educational specifications are a written document prepared by the district and approved by the board and shall include all of the following:

1. The district mission, vision, goals, and pedagogy;
2. Preliminary details related to facility type, grades served, and maximum student enrollment;
3. Pertinent provisions of the multi-hazard emergency operations plan that may inform the functionality of the built environment, including how the district complies with Education Code 37.108 [see CKC];
4. A written statement that includes:
    a. Inclusive design goals and considerations supported by the district; and
    b. How inclusive design should be addressed in new and renovated facility designs;
5. Minimum total square footage required to comply with the quantitative method of compliance; and
6. Innovative teaching or operational practices intended for implementation at the instructional facility that may lead to the use of the qualitative method of compliance.

Schedule

An educational specification shall be created for each campus type. If the design and construction of a new campus or major renovation of an existing campus differs substantially from an educational specification that exists for the same campus type, a separate educational specification must be developed. Educational specifications shall be initiated upon the first proposed project of its type and must be completed prior to initiating the planning or pro-

gramming phase of a project. Each educational specification must be updated after five years from the date of approval.

Compliance

The requirement for educational specifications is met when a district delivers the approved document to the architect.

19 TAC 61.1040(d)(2)

Exceptions

A district is exempt from the requirements of section 61.1040(d) (Educational Adequacy):

1. If a school facility experiences catastrophic damage and the board approves a capital improvement project in accordance with Education Code 44.0312(c) (delegation of contracting authority); or
2. In a situation deemed urgent by action of the board that warrants immediate action because, if left unresolved, it would impair the conduct of classes.

19 TAC 61.1040(d)(3)

Administration

Section 61.1040(e) establishes standards for the administration and procurements of design professional services and other professional services and for the administration of competitive bids and contracting requirements for construction services. A district shall comply with requirements in section 61.1040(e) and with all applicable requirements, restrictions, and responsibilities established in state law, administrative code, or by a local authority having jurisdiction.

A district shall comply with the administrative and procedural requirements established in section 61.1040(e) and with the standards established in section 61.1040(j) to promote construction quality and best value for a capital improvement project subject to section 61.1040.

A standard in section 61.1040 that incorporates by reference a key statutory provision or administrative rule is established as a compliance requirement for a district seeking to procure, obtain a competitive bid, or administer a contract for construction services, construction-related services, design professional services, or any other professional service required for a capital improvement project. The requirements establish a method by which a district shall demonstrate compliance with the requirements in section 61.1040(e) and with the construction quality standards and construction code requirements in section 61.1040(j). Any express reference to, or omission of, an applicable statutory provision in section 61.1040(e) may not be construed to diminish, alter, or abate a

provision of law applicable to a district or to a district capital improvement project subject to section 61.1040.

19 TAC 61.1040(e)(1)

District Requirements and Responsibilities

In addition to the provisions below, district requirements and responsibilities are set out in section 61.1040(e)(2).

Procurement Transparency

In accordance with Education Code 46.003(g), the board and voters of a district shall determine district needs concerning construction, acquisition, renovation, or improvement to instructional facilities. District funding is entrusted to the district by the taxpayers, and a district must ensure procurement processes and procedures are transparent and provide the best value to the district by complying with applicable laws governing procurement of professional design services and construction services [see CV] and with the standards established in section 61.1040(e) to promote construction quality. *19 TAC 61.1040(e)(2)(A)*

Superintendent's Duties

In accordance with Education Code 11.201, a superintendent shall oversee and ensure compliance with the standards for school facilities established in section 61.1040 and shall ensure board consideration for any action specified as being required to be made by the board, whether by statute, board rule, or other applicable requirement. *19 TAC 61.1040(e)(2)(B)*

Requirements for Other Services

Requirements for construction services, design professional services, and third-party consultants are set out in section 61.1040(e)(3)-(5).

Contract Compliance and Quality Control

A district shall ensure that services sought by or provided to the district for a school facility capital improvement project, including, but not limited to, professional design services, construction services, construction administration services, third-party inspection services, third-party testing services, or third-party code compliance services, are provided through a project-specific written agreement that meets the requirements of section 61.1040(e)(6). *19 TAC 61.1040(e)(6)*

Certification of Compliance with Standards

A district, design professional, contractor, and prime subcontractors, if applicable, shall certify compliance with all applicable standards required in section 61.1040(d), (g)-(k) as required by section 61.1040(f). *19 TAC 61.1040(f)(1)*

Instructional Facility Space Standards

Standards for space for instructional facilities are set out in section 61.1040(g).

Board Approval of Compliance

A board shall approve compliance with the quantitative method of compliance for instructional facility space requirements under section 61.1040(h) or the qualitative method of compliance for instruc-

tional facility space requirements under section 61.1040(i) before the commencement of design development for a capital improvement project for an instructional facility. *19 TAC 61.1040(h), (i)*

A district may use the qualitative method of compliance for a capital improvement project only if the board has prior documented approval of one or more instructional or operational practices for the proposed project that distributes or manages student capacity in an innovative or nontraditional manner. Prior to approving the qualitative method of compliance, all instructional and operational practices applicable to the proposed project must have been documented and approved by the board to demonstrate compliance with the requirements in section 61.1040(i). *19 TAC 61.1040(i)*

Construction Quality Standards

A capital improvement project for a school facility must reasonably comply with the following construction code requirements.

Construction Code Requirements

Projects located outside of a municipal jurisdiction in the unincorporated area of a county must reasonably comply with the requirements of section 61.1040(j)(1)(A).

Projects located inside of a municipal jurisdiction must reasonably comply with the requirements of section 61.1040(j)(1)(B).

19 TAC 61.1040(j)(1)

Third-Party Code Compliance Requirement

District responsibilities and other requirements related to third-party code compliance are set out in section 61.1040(j)(2).

Safety and Security Standards

A capital improvement project of a district must include campus-wide implementation of the provisions of section 61.1040(k)(1) related to communications infrastructure and access control. *19 TAC 61.1040(k)(1)*

Requirements for All Instructional Facilities

A district shall develop a document that designates each exterior door of each instructional facility campus-wide as either primary, secondary, or nondesignated entrances and shall ensure that the documented designation of all exterior doors becomes part of the long-range facility plan prior to commencement of construction of a capital improvement project. *19 TAC 61.1040(k)(1)(B)*

Additional Standards Based on Budget

A district shall approve a project construction budget for a capital improvement project at completion of the design development phase of the project and prior to commencement of the construction documents phase. The project construction budget approved by the district shall determine how many of the additional safety and security standards established in section 61.1040(k)(3) are required for the project. A district shall designate in writing which of the additional safety and security standards in section

61.1040(k)(3) have been approved by the board for a capital improvement project and shall provide to the prime design professional and each design professional of record written documentation of the approved safety and security standards for the proposed facility prior to commencement of the construction documents phase of a capital improvement project. The following standards shall apply to a capital improvement project for an instructional facility until all instructional facilities campus-wide fully comply with all of the additional safety and security standards specified in section 61.1040(k).

1. If a project construction budget is $1 million to $5 million, the facility is required to comply with at least one additional safety and security standard specified in section 61.1040(k)(3).

2. If a project construction budget is $5 million to $10 million, the facility is required to comply with at least two additional safety and security standards specified in section 61.1040(k)(3).

3. If a project construction budget is over $10 million, the facility is required to comply with all of the additional safety and security standards specified in section 61.1040(k)(3).

4. For a capital improvement project that includes new construction, the new construction of an instructional facility is required to comply with all three of the additional safety and security standards specified in section 61.1040(k)(3).

19 TAC 61.1040(k)(2)

Exceptions

A district may opt out of the requirements specified in section 61.1040(k)(2) if:

1. The facility is scheduled to, according to the long-range facilities plan, cease operations as an instructional facility within three years of the project; and

2. The five-year long-range facility plan clearly states that, prior to the end date of the plan, the facility will be compliant with at least two additional safety and security standards if ceasing operation does not occur or operation resumes. The long-range facility plan must specify which two additional safety and security standards will be implemented.

19 TAC 61.1040(k)(4)

Public Disclosure

A board shall ensure information or documents collected, developed, or produced by the district as part of a capital improvement project are reviewed to ensure that any project-specific safety and security information is adjusted for disclosure if necessary to ac-

commodate the requirement for a district to use protections provided in Education Code 37.108, which directs the district to protect sensitive information, while also providing general information to the public indicating district compliance commitments made in accordance with section 61.1040(k). *19 TAC 61.1040(k)(5)* [See CKC]

State Standards for Construction Before November 1, 2021

The requirements for school facility standards set out in 19 Administrative Code 61.1036 ("section 61.1036") shall apply to projects for new construction or major space renovations if:

1. A board adopts a fiscal year maintenance and operations budget where a capital improvement project title and a design or design and construction budget are delineated;
2. A board calls a bond election where one or more capital improvement project titles as well as design or design and construction budgets are delineated; or
3. A new contract or amendment to an existing contract for architectural services for new construction or a major renovation for a school facility project has been agreed to, and signed and dated by both parties to the agreement after January 1, 2004, and before November 1, 2021.

19 TAC 61.1036(b)

Definitions and Procedures

The words, terms, and procedures used in section 61.1036 shall have the meanings set out in section 61.1036(a) unless the context clearly indicates otherwise.

Certification of Design and Construction

In section 61.1036, "certify" indicates that the architect or engineer has reviewed the standards contained in 19 Administrative Code Chapter 61 and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the state of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform to the provisions of section 61.1036, except as indicated on the certification.

The district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance. To ensure that facilities have been designed and constructed according to the provisions of section 61.1036, each involved party shall execute responsibilities as set forth in section 61.1036(c)(3).

19 TAC 61.1036(c)

Construction Quality *Districts with Building Codes*	A district located in an area that has adopted local construction codes shall comply with section 61.1036(f)(1).
Districts without Building Codes	A district located in an area that has not adopted local building codes shall comply with section 61.1036(f)(2).
International Energy Conservation Code	The International Energy Conservation Code is adopted as the energy code for use in this state for all commercial construction. *Health and Safety Code 388.003(b); 34 TAC 19.53(b)* Because a public school building is not a residential building, it falls within the scope of "commercial" construction for purposes of the International Energy Conservation Code and likely for purposes of Health and Safety Code Chapter 388. *Atty. Gen. Op. KP-148 (2017)*
Portable, Modular Buildings	Any portable, modular building capable of being relocated that is purchased or leased for use as a school facility by a district, whether that building is manufactured off-site or constructed on-site, must comply with all provisions of section 61.1036. *19 TAC 61.1036(a)(11), (f)(3)*
Fire Escapes	School buildings of at least two stories shall be equipped with fire escapes as required by law. *Health and Safety Code 791.002, .035, .036*
Accessibility	No qualified individual with a disability shall, because a district's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in or be denied the benefits of the services, programs, and activities of a district or be subject to discrimination. *42 U.S.C. 12132; 28 C.F.R. 35.149; 29 U.S.C. 794; 34 C.F.R. 104.21* A district shall operate each program, service, or activity so that when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. A district is not required to make each existing facility or every part of a facility accessible to and usable by individuals with disabilities. A district may comply with these requirements by: 1. Redesigning or acquisitioning equipment. 2. Reassigning classes or other services to accessible buildings. 3. Assigning aides to qualified individuals with disabilities. 4. Home visits. 5. Delivery of services at alternate accessible sites.

6. Alteration of existing facilities.

7. Constructing new facilities that comply with 34 C.F.R. 104.23 and 28 C.F.R. 35.151.

8. Any other methods that result in making services, programs, and activities accessible to individuals with disabilities.

A district is not required to make structural changes in existing facilities when other methods will achieve compliance with Title II of the Americans with Disabilities Act and its implementing regulation. In choosing among available alternatives for meeting these requirements, a district shall give priority to methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

28 C.F.R. 35.150; 34 C.F.R. 104.22

Review of Plans

All plans and specifications for construction or for the substantial renovation or modification of a building or facility must be submitted to the Department of Licensing and Regulation for review and approval if the estimated construction cost is at least $50,000. The architect, interior designer, landscape architect, or engineer who has overall responsibility for the design of a constructed or reconstructed building or facility shall submit the plans and specifications required. A district as owner of the building or facility may not allow an application to be filed with a local governmental entity for a building construction permit related to the plans and specifications or allow construction, renovation, or modification of the building or facility to begin before the date the plans and specifications are submitted to the Department. On application to a local governmental entity for a building construction permit, the district as owner shall submit to the entity proof that the plans and specifications have been submitted to the Department under Government Code Chapter 469 (Elimination of Architectural Barriers).

A district, as owner of a building or facility described above is responsible for having the building or facility inspected for compliance with the standards and specifications adopted by the Commission of Licensing and Regulation under Government Code Chapter 469 not later than the first anniversary of the date that the construction or substantial renovation or modification of the building or facility is completed. The inspection must be performed by the Department, an entity with which the Commission contracts, or a person who holds a certificate of registration under Government Code Chapter 469, Subchapter E.

Gov't Code 469.101, .102(a), (c), .105

Notice

A district shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities. *34 C.F.R. 104.22(f)*

Relocatable Educational Facility

In this section, "relocatable educational facility" means a portable, modular building capable of being relocated, regardless of whether the facility is built at the installation site, that is used primarily as an educational facility for teaching the curriculum required under Education Code 28.002.

A relocatable educational facility that is purchased or leased on or after January 1, 2010, must comply with all provisions applicable to industrialized buildings under Occupations Code Chapter 1202.

Occupations Code 1202.004

Outdoor Lighting

An outdoor lighting fixture may be installed, replaced, maintained, or operated using state funds only if it meets standards for state-funded outdoor lighting fixtures in Health and Safety Code Chapter 425.

Exceptions

The standards for state-funded outdoor lighting fixtures do not apply if:

1. A federal law, rule, or regulation preempts state law;
2. The fixture is used on a temporary basis:
3. Because emergency personnel temporarily require additional illumination for emergency procedures;
4. For nighttime work;
5. Special events or circumstances require additional illumination;
6. The fixture is used solely to enhance the aesthetic beauty of an object; or
7. A compelling safety interest cannot be addressed by another method.

Special events or situations that may require additional illumination include sporting events and illumination of monuments, historic structures, or flags. Illumination for special events or situations must be installed to shield the outdoor lighting fixtures from direct view and to minimize upward lighting and light pollution.

Health and Safety Code 425.002

Safety and Security Requirements for Facilities

A district must ensure that each district facility complies with each school facilities standard, including performance standards and operational requirements, related to safety and security adopted under Education Code 7.061 (Facilities Standards) or provided by other law or agency rule.

Facilities Standards Compliance

A district must develop and maintain documentation of the district's implementation of and compliance with school safety and security facilities standards for each district facility, including a good cause exception claimed under Education Code 37.353 [see Good Cause Exception, below], and shall, if requested by the Texas Education Agency (TEA), provide that documentation in the manner prescribed by TEA.

Education Code 37.351

Good Cause Exception

If a district is unable to bring a district facility into compliance with a school facilities standard related to safety and security, the district may claim a good cause exception from the requirement to comply with that standard, including for a reason related to:

1. The age, physical design, or location of the noncompliant facility;
2. The projected remaining use or functional life of the noncompliant facility;
3. Availability of funding; or
4. Supply chain obstacles.

A district that claims a good cause exception must develop an alternative performance standard with which the district is able to comply.

A good cause exception claimed by a district expires on the fifth anniversary of the date on which the exception is claimed. On the expiration of the exception, the district must reevaluate whether the district is able to comply with each school facility standard related to safety and security, and if not, renew the claim for an exception and the alternative performance standard.

[See CKE for good cause exception from compliance with armed security officer requirement.]

Education Code 37.353

Security Review

If a district constructs, acquires, renovates, or improves a district facility, the district shall, as soon as practicable, conduct a security review of the facility to:

1. Determine whether the facility meets school safety and security requirements as described by commissioner rule; and

2. Identify security vulnerabilities at the facility in the event of an active shooter incident and describe strategies to mitigate each vulnerability identified.

Education Code 37.1087

Confidentiality

Any document or information collected, identified, developed, or produced relating to a safety or security requirement is confidential under Government Code 418.177 and 418.181 (Texas Disaster Act) and not subject to disclosure under Government Code Chapter 552 (Public Information Act). *Education Code 37.355.*

Commissioner's School Safety Rules for Instructional Facilities

Definitions

The following words and terms when used in 19 Administrative Code 61.1031 shall have the following meanings:

"Actively monitored" means supervised by an adult who can visibly review visitors prior to entrance, who can take immediate action to close and/or lock the door, and whose duties allow for sufficient attention to monitoring.

"Exterior secured area" means an area fully enclosed by a fence and/or wall that:

1. If enclosed by a fence or wall, utilizes a fence or wall at least 6 feet high with design features that prevent it from being easily scalable, such as stone, wrought iron, chain link with slats or wind screen, or chain link topped with an anti-scaling device, or utilizes a fence or wall at least 8 feet high;

2. Is well maintained; and

3. If gated, features locked gates with emergency egress hardware and has features to prevent opening from the exterior without a key or combination mechanism.

"Instructional facility" has the meaning assigned in Education Code 46.001, and includes any real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching curriculum under Education Code 28.002. An instructional facility does not include real property, improvements to real property, or necessary fixtures of an improvement to real property that are part of a federal, state, or private correctional facility or facility of an institution of higher education, medical provider, or other provider of professional or social services over which a school system has no control.

"Modular, portable building" means:

1. An industrialized building as defined by Occupations Code 1202.002 and 1202.003;

2. Any relocatable educational facility as defined by Occupations Code 1202.004, regardless of the location of construction of the facility; or

3. Any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

"Primary entrance" means:

1. The main entrance to an instructional facility that is closest to or directly connected to the reception area; or

2. Any exterior door the school system intends to allow visitors to use to enter the facility during school hours either through policy or practice.

"School system" means a public independent school district or public open-enrollment charter school.

"Secure vestibule" means a secured space with two or more sets of doors and an office sign-in area where all but the exterior doors shall:

1. Remain closed, latched, and locked;

2. Comply with 19 Administrative Code 61.1031(c)(3)(B) (exterior door construction); and

3. Only open once the visitor has been visually verified.

19 TAC 61.1031(a)

Safety and Security Standards

The provisions of 19 Administrative Code 61.1031 apply to all school instructional facilities owned, operated, or leased by a school system, regardless of the date of construction or date of lease. The provisions ensure that all school system instructional facilities have access points that are secured by design, maintained to operate as intended, and appropriately monitored. *19 TAC 61.1031(b)*

A school system shall implement the following safety and security standards compliance requirements to all school instructional facilities owned, operated, or leased by the school system.

Doors, Entrances, and Windows

All instructional facilities campus-wide, including modular, portable buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location. The characters may be installed on the door, or on at least one door at locations where more than one door

leads from the exterior to the same room inside the facility, or on the wall immediately adjacent to or above the door location. Characters shall comply with the International Fire Code Section 505. The primary entrance of an instructional facility shall always be the first in the entire sequence and is the only door location that does not require numbering. The numbering sequence shall be clockwise and may be sequenced for the entire campus or for each facility individually. The door-numbering process must comply with any and all accessibility requirements related to signage.

Unless a secure vestibule is present, a primary entrance shall:

1. Meet all standards for exterior doors;
2. Include a means to allow an individual located within the building to visually identify an individual seeking to enter the primary entrance when the entrance is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms;
3. Feature a physical barrier that prevents unassisted access to the facility by a visitor; and
4. Feature a location for a visitor check-in and check-out process.

All exterior doors shall:

1. Be, by default, set to a closed, latched, and locked status, except that:
    a. A door may be unlocked if it is actively monitored or within an exterior secured area; and
    b. For the purposes of ventilation, a school system may designate in writing as part of its multihazard emergency operations plan specific exterior doors that are allowed to remain open for specified periods of time if explicitly authorized by the school safety and security committee when a quorum of members are present, and only if it is actively monitored or within an exterior secured area;
2. Be constructed, both for the door and door frame and their components, of materials and in a manner that make them resistant to entry by intruders. Unless inside an exterior secured area, doors constructed of glass or containing glass shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to open or otherwise enter through the door (for example, using forced entry-resistant film);

3. Include:

    a. A mechanism that fully closes and engages locking hardware automatically after entry or egress without manual intervention, regardless of air pressure within or outside of the facility; and

    b. A mechanism that allows the door to be opened from the inside when locked to allow for emergency egress while remaining locked; and

4. If keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic key device.

Except when inside an exterior secured area, classrooms with exterior entry doors shall include a means to allow an individual located in the classroom to visually identify an individual seeking to enter the classroom when the door is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms.

Except when inside an exterior secured area, all windows that are adjacent to an exterior door and that are of a size and position that, if broken, would easily permit an individual to reach in and open the door from the inside shall be constructed or modified such that the glass cannot be easily broken.

Except when inside an exterior secured area, all ground-level windows near exterior doors that are of a size and position that permits entry from the exterior if broken shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to enter through the window frame (for example, using forced entry-resistant film).

If designed to be opened, all ground-level windows shall have functional locking mechanisms that allow for the windows to be locked from the inside and, if large enough for an individual to enter when opened or if adjacent to a door, be closed and locked when staff are not present.

Roof access doors should default to a locked, latched, and closed position when not actively in use and be lockable from the interior.

All facilities must include one or more distinctive, exterior secure master key box(es) designed to permit emergency access to both law enforcement agencies and emergency responder agencies from the exterior (for example, a Knox box) at a location designated by the local authorities with applicable jurisdiction or provide all local law enforcement electronic or physical master key access to the building(s).

Communications Infrastructure

A communications infrastructure shall be implemented that must:

1. Ensure equipment is in place such that law enforcement and emergency responder two-way radios can function within most portions of the building(s); and

2. Include a panic alert button, duress, or equivalent alarm system, via standalone hardware, software, or integrated into other telecommunications devices or online applications, that includes the following functionality:

    a. An alert must be capable of being triggered by campus staff, including temporary or substitute staff, from an integrated or enabled device.

    b. An alert must be triggered automatically in the event a district employee makes a 9-1-1 call using the hardware or integrated telecommunications devices from any location within the school system.

    c. With any alert generated, the location of where the alert originated shall be included.

    d. The alert must notify a set of designated school administrators as needed to provide confirmation of response, and, if confirmed, notice must be issued to the 9-1-1 center of an emergency situation requiring a law enforcement and/or emergency response and must include the location of where the alert originated. A notice can simultaneously be issued to all school staff of the need to follow appropriate emergency procedures.

    e. For any exterior doors that feature electronic locking mechanisms that allow for remote locking, the alert system will trigger those doors to automatically lock.

Compliance with 9-1-1 Rules and Regulations

In implementing these requirements, school systems shall comply with state and federal Kari's Laws and federal RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems, including a multi-line telephone system.

19 TAC 61.1031(c)

Operating Requirements

A school system shall implement the following.

1. Access control. The board shall adopt a policy requiring the following continued auditing of building access:

    a. Conduct at least weekly inspections during school hours of all exterior doors of all instructional facilities to certify

that all doors are, by default, set to a closed, latched, and locked status and cannot be opened from the outside without a key as required above;

b. Report the findings of weekly inspections to the school system's safety and security committee and ensure the results are kept for review as part of the safety and security audit;

c. Report the findings of weekly inspections to the principal or leader of the instructional facility to ensure awareness of any deficiencies identified and who must take action to reduce the likelihood of similar deficiencies in the future; and

d. Include a provision in the school system's applicable policy stating that nothing in a school system's access control procedures will be interpreted as discouraging parents, once properly verified as authorized campus visitors, from visiting campuses they are authorized to visit.

2. Exterior and interior door numbering site plan.

a. A school system must develop and maintain an accurate site layout and exterior and interior door designation document for each instructional facility school system-wide that identifies all exterior and interior doors in the instructional facility and depicts all exterior doors on a floor plan with an alpha-numeric designation, in accordance with the door numbering specifications established above.

b. Copies of exterior and interior door numbering site plans shall be readily available in each campus main office.

c. Electronic copies of exterior and interior door numbering site plans shall be supplied to the local 9-1-1 administrative entity so that the site plans can be made available to emergency responders by 9-1-1 dispatchers.

d. The site layout and exterior and interior door designation document should be oriented in a manner that depicts true north.

3. Maintenance.

a. A school system shall perform at least twice-yearly maintenance checks to ensure the facility components func-

tion as required. At a minimum, maintenance checks shall ensure the following:

(1) Instructional facility exterior doors function properly, including meeting the requirements above;

(2) The locking mechanism for any ground-level windows that can be opened function properly;

(3) Any perimeter barriers and related gates function properly;

(4) All panic alert or similar emergency notification systems in classrooms and campus central offices function properly, which includes at least verification from multiple campus staff and classroom locations that a notification can be issued and received by the appropriately designated personnel, that the alert is successfully broadcast to all campus staff and to appropriate law enforcement and emergency responders, and that a potential threat observed on video triggers an alert from video surveillance monitoring systems;

(5) All school telephone systems and communications infrastructure provide accurate location information when a 9-1-1 call is made in accordance with state and federal laws and rules and when an alert is triggered;

(6) All exterior master key boxes function properly and the keys they contain function properly;

(7) Law enforcement and emergency responder two-way radios operate effectively within each instructional facility; and

(8) Two-way radios used by school system peace officers, school resource officers, or school marshals properly communicate with local law enforcement and emergency response services.

b. A school system shall ensure procedures are in place to require that staff who become aware of a facility component functionality deficiency that would be identified during the twice-yearly maintenance review immediately report the deficiency to the school system's administration, regardless of the status of the twice-yearly maintenance review.

c. A school system shall promptly remedy any deficiencies discovered as a consequence of maintenance checks.

19 TAC 61.1031(d)

Compliance With Standards for Construction

In implementing the requirements of 19 Administrative Code 61.1031, school systems shall comply with the provisions of 19 Administrative Code 61.1040(j). [See CS]

To the extent that any provisions of 19 Administrative Code 61.1031 conflict with rules adopted in Chapter 61, Subchapter CC, (relating to Commissioner's Rules Concerning School Facilities), including terms defined or standards established, the provisions of 19 Administrative Code 61.1031 prevail.

In implementing these requirements, school systems shall comply with the standards adopted under Government Code 469.052 (Elimination of Architectural Barriers).

19 TAC 61.1031(e), (f), (g)

Records Control Schedule

In implementing these requirements, school systems must adopt a three-year records control schedule that complies with the minimum requirements established by the Texas State Library and Archives Commission schedule, record series item number 5.4.017, as referenced in Government Code 441.169 and Local Government Code 203.041. *19 TAC 61.1031 (h)* [See CPC]

Certification

All requirements above shall be implemented during the 2022- 23 school year and thereafter. Annually, a school system shall certify compliance with those requirements as part of ongoing security audits under Education Code 37.108(b); maintain the certification locally; and report as required by the Texas School Safety Center. Any and all noncompliance shall be reported to the school system's safety and security committee, the school system's board, and the Texas School Safety Center, as required by Education Code 37.108(c). [See CKA]

Provisional Certification

A school system may provisionally certify compliance of a facility component that is not in compliance if:

1. The school system has taken the necessary steps to initiate an upgrade of the facility component to ensure compliance; and

2. For the 2023-24 school year, the contractor or supplier has been procured and has provided a time frame when the upgrade will be completed.

TEA may modify rule requirements or grant provisional certification for individual site needs as determined by TEA.

Rules related to provisional certification expire August 31, 2024.

19 TAC 61.1031(i), (j)

Silent Panic Alert Technology

Beginning with the 2025-26 school year, a district shall provide each classroom in the district with silent panic alert technology that allows for immediate contact with district emergency services and emergency services agencies, law enforcement agencies, health departments, and fire departments.

Silent panic alert technology provided by a district does not satisfy the requirement under Education Code 37.108(a)(2) [see CKC] for the district to ensure employees have classroom access to a telephone or another electronic communication device.

To comply, a district may use funds provided to the district through the school safety allotment or other available funds and may use the district's customary procurement process.

Education Code 37.118

Breaching Tool and Ballistic Shield

Each district must have at least one breaching tool and one ballistic shield available for use at each campus in the event of an active shooter incident. *Education Code 37.1171*

Security Criteria

A district that constructs a new instructional facility or conducts a major renovation of an existing instructional facility using Instructional Facilities Allotment funds shall consider, in the design of the instructional facility, appropriate security criteria. *Education Code 46.0081*

Playgrounds

Public funds may not be used to purchase or install:

1. Playground equipment that:
    a. Does not comply with each applicable provision of ASTM Standard F1487-07ae1, "Consumer Safety Performance Specification for Playground Equipment for Public Use," published by ASTM International; or
    b. Has a horizontal bare metal platform or a bare metal step or slide, unless the bare metal is shielded from direct sun by a covering provided with the equipment or by a shaded area in the location where the equipment is installed;
2. Surfacing for the area under and around playground equipment if the surfacing will not comply with each applicable provision of ASTM Standard F2223-04e1, "Standard Guide for ASTM Standards on Playground Surfacing," published by ASTM International.

Exception

Public funds may be used to maintain playground equipment or surfacing that was purchased before September 1, 2009, even if the equipment or surfacing does not comply with the applicable specifications described above.

Health and Safety Code 756.061

Texas Women's Privacy Act

Definitions

"Female" means an individual who naturally has or will have, or had or would have but for a congenital anomaly or an intentional or unintentional disruption, a reproductive system designed to produce, transport, and provide eggs for fertilization.

"Male" means an individual who naturally has or will have, or had or would have but for a congenital anomaly or an intentional or unintentional disruption, a reproductive system designed to produce, transport, and utilize sperm for fertilization.

"Multiple-occupancy private space" means a facility designed or designated for simultaneous use by more than one individual and in which an individual may be in a state of undress in the presence of another individual, regardless of whether the facility provides curtains or partial walls for privacy. The term includes a restroom, locker room, changing room, or shower room.

"Sex" means an individual's biological sex, either male or female.

"Single-occupancy private space" means a facility designed or designated for use by only one individual at a time and in which the individual may be in a state of undress. The term includes:

1. A single toilet restroom with a locking door that is designed or designated as unisex or for use based on sex; and
2. Sleeping quarters designed or designated for use by one individual.

Gov't Code 3002.001

Designation of Multiple-Occupancy Private Spaces

A district shall designate each multiple-occupancy private space in a building the district owns, operates, or controls for use only by individuals of one sex.

A district shall take every reasonable step to ensure an individual whose sex is opposite to the sex designated for a multiple-occupancy private space does not enter the private space.

Gov't Code 3002.051

Accommodations

A district is not prohibited from:

1. Adopting a policy necessary to accommodate an individual with a disability, a young child, or an elderly individual who re-

quires assistance when using a multiple-occupancy private space;

2. Establishing a single-occupancy private space, family restroom, or changing room; or

3. Changing the designation of a multiple-occupancy private space from the use designated to exclusive use by individuals of the sex opposite to the previously designated sex.

A district is prohibited from providing an accommodation that allows an individual to use a multiple-occupancy private space designated for the exclusive use of individuals of the sex opposite to the individual's sex.

Gov't Code 3002.052

Exceptions

A designation of a multiple-occupancy private space does not apply to:

1. An individual entering a multiple-occupancy private space designated for the exclusive use of individuals of the sex opposite to the individual's sex:

   a. For a custodial purpose;

   b. For a maintenance or inspection purpose;

   c. To render medical or other emergency assistance;

   d. To accompany and provide assistance to an individual who needs assistance in using the facility;

   e. For a law enforcement purpose; or

   f. To render assistance necessary in preventing a serious threat to proper order or safety; or

2. A child who is:

   a. Nine years of age or younger entering a multiple-occupancy private space designated for the exclusive use of individuals of the sex opposite to the child's sex; and

   b. Accompanied by an individual caring for the child.

Gov't Code 3002.053

Civil Penalty

A district that violates these requirements is liable for a civil penalty of:

1. $25,000 for the first violation; and

2. $125,000 for the second or a subsequent violation.

Each day of a continuing violation constitutes a separate violation.

Gov't Code 3002.101

Complaint and Notice

A resident of this state may file a complaint with the attorney general against a district for a violation of these requirements only if:

1. The resident provides the district a written notice describing the violation; and
2. The district does not cure the violation before the end of the third business day after the date the written notice is received.

Gov't Code 3002.102(a)

Attorney General Investigation

Before bringing an action against a district, the attorney general shall investigate a complaint to determine whether legal action is warranted.

The district subject to the complaint shall provide to the attorney general any information the attorney general requests in connection with the complaint, including:

1. Supporting documents related to the complaint; and
2. A statement on whether the district has complied or intends to comply.

If the attorney general determines legal action is warranted, the attorney general shall provide to the appropriate officer of the district charged with the violation a written notice:

1. Describing the violation and location of the multiple-occupancy private space found to be in violation;
2. Stating the amount of the proposed penalty for the violation; and
3. Requiring the district to cure the violation on or before the 15th day after the date the notice is received to avoid the penalty, unless a court previously found the district liable for a violation.

Gov't Code 3002.103

Civil Penalty and Mandamus

If, after receipt of notice, the district has not cured the violation on or before the 15th day after the date the notice is received or was previously found liable by a court for a violation, the attorney general may bring an action to collect the civil penalty.

In addition to bringing an action, the attorney general may also file a petition for a writ of mandamus or apply for other appropriate equitable relief.

An action may be brought or filed in a district court in the county in which the principal office of the district is located.

The attorney general may recover reasonable expenses incurred in obtaining relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

Gov't Code 3002.104 (a)-(d)

Private Cause of Action

A person affected by a district's violation of these requirements may bring a civil action and is entitled to obtain:

1. Declaratory relief;
2. Injunctive relief; and
3. Court costs, including reasonable attorney's and witness fees.

Gov't Code 3002.105(a)

Building Access Control

Audits of building access control shall include weekly inspections of instructional facilities during school hours to certify all exterior doors are, by default, set to closed, latched, and locked status and cannot be opened from the outside without a key.

The Superintendent shall ensure that the findings of the weekly inspections are:

1. Reported to the District safety and security committee; and
2. Reported to the campus principal or lead administrator of the instructional facility to ensure awareness of any deficiencies identified.

The campus principal or lead administrator shall assign appropriate staff to take action to reduce the likelihood of similar deficiencies in the future.

The results of the weekly reports shall be kept for review as part of the required safety and security audit.

The District's building access control procedures shall not be interpreted as discouraging parents or guardians who have been properly verified as authorized visitors from visiting their student's campus. [See GKC]

Designation and Use of Private Spaces

The Board shall ensure that the Superintendent, or appropriate staff as determined by the Superintendent, designates private spaces in accordance with law.

The Superintendent shall develop administrative regulations to ensure compliance with law and policy regarding the use of private spaces in District facilities.

Table of Contents

Definition **3**
Board Authority **3**
Delegation of Authority 3
Contracts Valued at or Above $100,000 ..... **4**
Exceptions 4
Notice Publication **4**
Contract Selection Criteria **5**
Experience Modifier 5
Using Method Other Than Competitive Bidding **6**
Determine Best Value 6
Publish Criteria 6
Make Evaluations Public 6
Submission **6**
Documents Related to Evaluation and Ranking **6**
Uniform General Conditions for Contracts **7**
Right to Work **7**
Collective Bargaining 7
Out-of-State Bidders **7**
Change Orders **7**
Unsigned Change Orders 8
Inspection, Verification, and Testing **8**
Impact Fees **9**
Design Professionals **9**
Architects and Engineers 9
Procuring Architectural or Engineering Services 11
Contracts for Engineering, Architectural, or Land Surveying Services 12
Payment and Performance Bonds **13**
Failure to Obtain Payment Bond 13
Bond for Insured Loss 14
Prevailing Wage on Public Works **14**
Enforcement 15
Retainage and Reimbursement 16
Penalty for Noncompliance 16

Criminal Offense 17
Required Workers' Compensation Coverage 17
Exception 18
Definitions 18
Criminal Offenses....18
Enforcement Actions 18
Defects in Facilities....18
Attorney Fees....20
Construction Liability Claims....20

Note: For information on the new instructional facilities allotment, see CBA.

For additional legal requirements applicable to purchases with federal funds, see CBB.

For information on procuring goods and services under Education Code Chapter 44, see CH.

For required vendor disclosures and contract provisions, including prohibitions, see CHE.

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).

For legal requirements related to energy savings performance contracts, see CL.

For facility standards, see CS.

Definition

"Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work. *Gov't Code 2253.001(4)*

Board Authority

A district may adopt rules as necessary to implement Government Code Chapter 2269. *Gov't Code 2269.051; 19 TAC 61.1040(e)(2)(H)*

Delegation of Authority

The board may delegate its authority under Government Code Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person. *Gov't Code 2269.053(a)*

The district shall provide notice of the delegation, the limits of the delegation, and the name or title of each designated person by rule or in the request for bids, proposals, or qualifications or in an addendum to the request. *Gov't Code 2269.053(b); Education Code 44.0312(a)*

If the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board in an open public meeting is advisory only. *Education Code 44.0312(a); 19 TAC 61.1040(e)(2)(E)*

A superintendent shall ensure that a requirement to specify the level of delegation of authority is included in the bid specifications when procuring construction services to select a contractor, in accordance with Education Code 44.0312. *19 TAC 61.1040(e)(2)(F)*

[For information regarding delegation in the event of a catastrophe, emergency, or natural disaster, see CH.]

Contracts Valued at or Above $100,000

Except as provided by Education Code Chapter 44, Subchapter B, all district contracts for the purchase of goods and services valued at $100,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for a district [see also CH]:

1. An interlocal contract. *Education Code 44.031(a)(4)* [See CH]
2. A method provided by Government Code Chapter 2269 for construction services. *Education Code 44.031(a)(5)*
    a. Competitive bidding. *Gov't Code 2269 Subch. C* [See CVA]
    b. Competitive sealed proposals. *Gov't Code 2269 Subch. D* [See CVB]
    c. Construction manager-agent method. *Gov't Code 2269 Subch. E* [See CVC]
    d. Construction manager-at-risk method. *Gov't Code 2269 Subch. F* [See CVD]
    e. Design-build method. *Gov't Code 2269 Subch. G* [See CVE]
    f. Job order contracting. *Gov't Code 2269 Subch. I* [See CVF]
3. The reverse auction procedure as defined by Government Code 2155.062(d). *Education Code 44.031(a)(6)* [See CH]

Education Code 44.031(a); Gov't Code Ch. 2269

Exceptions

Emergency Damage or Destruction

For information on procurement options when school equipment, a facility, or personal property is destroyed or severely damaged as a result of an unforeseen catastrophe or emergency, under Education Code 44.031, see CH.

Contracts Requiring a Bond

A reverse auction procedure may not be used to obtain services related to a public work contract for which a bond is required under Government Code 2253.021 [see Payment and Performance Bonds, below]. "Reverse auction procedure" has the meaning assigned by Government Code 2155.062 or a procedure similar to that described by Section 2155.062. *Gov't Code 2253.021(h)*

Notice Publication

A board shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

For a contract entered into by a board under a method provided by Government Code 2269, the board shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

Gov't Code 2269.052(a)-(b)

[See CH for additional notice publication requirements.]

Contract Selection Criteria

In determining the award of a contract under Government Code Chapter 2269, the district shall consider and apply:

1. Any existing laws, including any criteria, related to historically underutilized businesses; and
2. Any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

In determining the award of a contract, the district may consider:

1. The price.
2. The offeror's experience and reputation.
3. The quality of the offeror's goods or services.
4. The impact on the ability of the district to comply with rules relating to historically underutilized businesses.
5. The offeror's safety record.
6. The offeror's proposed personnel.
7. Whether the offeror's financial capability is appropriate to the size and scope of the project.
8. Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Gov't Code 2269.055

Experience Modifier *Definitions*

"Contract" means a contract awarded by a district that is:

1. A construction contract, as defined by Business and Commerce Code 272.0001; or
2. A contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

"Contract solicitation" means a request for bids, proposals, qualifications, offers, or other responses from potential contractors under a contract.

"Experience modifier" means a factor expressed as a value that:

1. Is assigned to an employer seeking to purchase a workers' compensation insurance policy in this state;
2. Affects the premium amount for the policy; and
3. Is based on the employer's past loss experience.

Voidable Contract Provisions

An offer to contract or a contract solicitation may not require a specified experience modifier in order to accept the offer or respond to the contract solicitation.

A contract or an agreement collateral to or affecting a contract may not require the contractor to have a specified experience modifier.

A contract solicitation, an offer, a contract, or an agreement collateral to or affecting a contract that violates these requirements is voidable as against public policy.

Gov't Code 2252.910

Using Method Other Than Competitive Bidding

The board that considers a construction contract using a method authorized by Government Code Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the district.

Determine Best Value

Publish Criteria

The district shall base its selection among offerors on applicable criteria listed for the particular method used. The district shall publish in the request for proposals or qualifications:

1. The criteria that will be used to evaluate the offerors;
2. The applicable weighted value for each criterion; and
3. A detailed methodology for scoring each criterion.

Make Evaluations Public

The district shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Gov't Code 2269.056

Submission

A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery. *Gov't Code 2269.059*

Documents Related to Evaluation and Ranking

An offeror who submits a bid, proposal, or response to a request for qualifications for a construction contract under Government Code Chapter 2269 may, after the contract is awarded, make a request in writing to the district to provide documents related to the evaluation of the offeror's submission.

Not later than the 30th day after the date a request is made, the district shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission.

Gov't Code 2269.060

Uniform General Conditions for Contracts

After reviewing the uniform general conditions adopted by the Texas Facilities Commission under Government Code 2166.302, a school district may adopt uniform general conditions to be incorporated in all district building construction contracts. *Education Code 44.035*

Right to Work

While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement under Government Code Chapter 2269, a district:

1. May not consider whether a person is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

Gov't Code 2269.054

Collective Bargaining

A district awarding a public work contract funded with state money, including the issuance of debt guaranteed by the state, may not:

1. Prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or
2. Discriminate against a person described by item 1 based on the person's involvement in the agreement, including the person's status or lack of status as a party to the agreement or willingness or refusal to enter into the agreement.

Gov't Code 2269.0541(a)

Out-of-State Bidders

For legal requirements regarding out-of-state bidders, see CH.

Change Orders

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

A contract with an original contract price of $1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than $1 million increases the contract amount to $1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

Education Code 44.0411

Unsigned Change Orders

A vendor may elect not to proceed with additional work directed by a district under a public work contract if:

1. The vendor has not received a written, fully executed change order for the district-directed additional work; and
2. The aggregate actual or anticipated value of the additional work under the vendor's contract terms plus any previous district-directed additional work for which the vendor has not received a written, fully executed change order exceeds 10 percent of the vendor's original public work contract amount.

A subcontractor may elect not to proceed with additional work directed by a vendor under a subcontract if:

1. The subcontractor has not received a written, fully executed change order for the district-directed additional work from the vendor; and
2. The aggregate actual or anticipated value of the additional work under the subcontractor's subcontract terms plus any previous district-directed additional work for which the subcontractor has not received a written, fully executed change order exceeds 10 percent of the subcontractor's subcontract amount.

A vendor or subcontractor who elects not to proceed with additional work is not responsible for damages associated with the election not to proceed.

Gov't Code 2251.0521

Inspection, Verification, and Testing

Independently of the contractor, construction manager-at-risk, or design-build firm, a district shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district. The district shall select the services for

which it contracts in accordance with Government Code 2254.004. *Gov't Code 2269.058*

Note: For additional requirements related to code compliance, including fees and contracts, see 19 Administrative Code 61.1040(e)(5).

Impact Fees

A district is not required to pay impact fees imposed under Local Government Code Chapter 395 unless the board consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board considers advisable to provide for the payment of the fees. *Local Gov't Code 395.022*

Design Professionals

A district shall designate one design professional to be the prime design professional for a capital improvement project and shall contractually engage the prime design professional to review and coordinate the design of the project, allowing the prime design professional to rely on and contract for other design professionals where appropriate. *19 TAC 61.1040(a)(4), (e)(4)(D)*

A district shall require any design professional contractually engaged to procure professional design services from any other design professional as a subconsultant to select and subcontract the professional design services based on the qualification-based selection process established in Government Code Chapter 2254. [See Procuring Architectural or Engineering Services, below] *19 TAC 61.1040(e)(5)(B)*

Architects and Engineers

An architect or engineer required to be selected or designated under Government Code Chapter 2269 has full responsibility for complying with Occupations Code Chapter 1051 or 1001, as applicable.

If the selected or designated architect or engineer is not a full-time employee of the district, the district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004 [see Procuring Professional Services, below].

Gov't Code 2269.057

Registered Architect

An architectural plan or specification for any of the following may be prepared only by an architect:

1. A new building having construction costs exceeding $100,000 that is to be:

    a. Constructed and owned by a district; and

b. Used for education, assembly, or office occupancy; or

2. An alteration or addition having construction costs exceeding $50,000 that:

a. Is to be made to an existing building that:

(1) Is owned by a district; and

(2) Is or will be used for education, assembly, or office occupancy; and

b. Requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

This provision does not prohibit an owner of a building from contracting with an architect or engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand the scope of practice of an architect or engineer beyond the scope of practice that the architect or engineer is authorized to practice under Occupations Code Chapter 1001 or 1051.

Occupations Code 1051.703; 22 TAC 1.212

Registered Engineer

A district may not construct a public work involving engineering in which the public health, welfare, or safety is involved, unless:

1. The engineering plans, specifications, and estimates have been prepared by an engineer; and

2. The engineering construction is to be performed under the direct supervision of an engineer.

Occupations Code 1001.407

The following work is exempt from Occupations Code Chapter 1001 (Texas Engineering Practice Act):

1. A public work that involves electrical or mechanical engineering, if the contemplated expense for the completed project is $8,000 or less; or

2. A public work that does not involve electrical or mechanical engineering, if the contemplated expense for the completed project is $20,000 or less.

Occupations Code 1001.053

Certification for Purchases Through Purchasing Cooperatives

A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative under Government Code Chapter 791 in an amount greater than $50,000 unless a person designated by the district certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Occupation Code Chapter 1001 or 1051; or

2. The plans and specifications required under Occupation Code Chapters 1001 and 1051 have been prepared.

"Purchasing cooperative" means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

Gov't Code 791.011(j)

Note: For legal provisions related to interlocal contracts, generally, see GRB.

For legal provisions related to using interlocal contracts for purchasing goods and services, see CH.

Procuring Architectural or Engineering Services

Education Code 44.031 does not apply to a contract for professional services rendered, including the services of an architect. *Education Code 44.031(f)* [See CH for information on the Professional Services Procurement Act generally.]

In procuring architectural, engineering, or land-surveying services, a district shall:

1. First select the most highly qualified provider on the basis of demonstrated competence and qualifications; and

2. Then attempt to negotiate with that provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land-surveying services, a district shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The district shall continue this process to select and negotiate with providers until a contract is entered into.

Gov't Code 2254.004

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

Contracts for Engineering, Architectural, or Land Surveying Services

A covenant or promise in, in connection with, or collateral to a contract for engineering, architectural, or land surveying services to which a district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer, registered architect, or land surveyor whose work product is the subject of the contract

Indemnification

must indemnify or hold harmless the district against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

Duty to Defend

Except as provided below, a covenant or promise in, in connection with, or collateral to a contract for engineering, architectural, or land surveying services to which a district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer, registered architect, or land surveyor whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the district, the district's agent, the district's employee, or other entity, excluding the engineer, architect, or land surveyor or that person's agent, employee, or subconsultant, over which the district exercises control. A covenant or promise may provide for the reimbursement of a district's reasonable attorney's fees in proportion to the engineer's, architect's, or land surveyor's liability.

District as Additional Insured

A district may require in a contract for engineering, architectural, or land surveying services to which the district is a party that the engineer, architect, or land surveyor name the district as an additional insured under the engineer's, architect's, or land surveyor's general liability insurance policy and provide any defense provided by the policy.

Standard of Care

A contract for engineering, architectural, or land surveying services to which a district is a party must require a licensed engineer, registered architect, or land surveyor to perform services:

1. With the professional skill and care ordinarily provided by competent engineers, architects, or land surveyors practicing under the same or similar circumstances and professional license; and

2. As expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer, architect, or land surveyor.

In a contract for engineering, architectural, or land surveying services to which a district is a party, a provision establishing a different standard of care than a standard described above is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described above applies.

Nothing in these provisions prohibits a district in a contract for engineering or architectural services to which the district is a party from including and enforcing conditions that relate to the scope, fees, and schedule of a project in the contract.

Local Gov't Code 271.904

Payment and Performance Bonds

A district that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the district:

1. A performance bond if the contract is in excess of $100,000; and

2. A payment bond if the contract is in excess of $25,000.

A bond required by this provision must be executed by a corporate surety in accordance with Insurance Code Article 7.19-1 (now Insurance Code 3503.001-.005). A bond for a public work contract with a district must be payable to and its form must be approved by the awarding board.

Gov't Code 2253.021(a), (d)-(e)

The performance bond is solely for the protection of the district awarding the public work contract, in the amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. *Gov't Code 2253.021(b)*

The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material, and in the amount of the contract. *Gov't Code 2253.021(c)*

Failure to Obtain Payment Bond

If a district fails to obtain from a prime contractor a payment bond as required above or fails to include in a lease the lease terms required by Government Code 2252.909 [see CDB]:

1. The district is subject to the same liability that a surety would have if the surety had issued a payment bond and if the district had obtained the bond; and

2. A payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the public work contract were subject to Property Code Chapter 53, Subchapter J (Lien on Money Due Public Works Contractor).

Gov't Code 2253.027(a)

Bond for Insured Loss

A district shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the district, furnishes or has furnished by a contractor:

1. A performance bond as described above for the benefit of a district; and

2. A payment bond, as described above for the benefit of the beneficiaries described above.

If the payment bond is not furnished, the district is subject to the same liability that a surety would have if the surety had issued the payment bond and the district had required the bond to be provided.

The bonds required to be furnished by the provisions above shall be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish these bonds.

Exception to Bond Requirement

These provisions do not apply to a district when a surety company is complying with an obligation under a bond that had been issued for the benefit of the district.

Gov't Code 2253.022

Prevailing Wage on Public Works

"Worker" includes a laborer or mechanic. *Gov't Code 2258.001(3)*

A worker employed on a public work by or on behalf of a district shall be paid:

1. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and

2. Not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The requirements above do not apply to maintenance work. A worker is employed on a public work for purposes of this provision if the worker is employed by a contractor or subcontractor in the execution of a contract for public work with a district.

Gov't Code 2258.021

For a contract for a public work awarded by a district, the board shall determine the general prevailing rate of per diem wages in the district for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

1. Conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the district in which the public work is to be performed; or

2. Using the prevailing wage rate as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.

The board shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents. A board shall specify in the call for bids for the contract and in the contract itself the wage rates determined under these provisions. The board's determination of the general prevailing rates of per diem wages is final.

Gov't Code 2258.022(a), (c)-(e)

Government Code 2258.022(b) applies to a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. *Gov't Code 2258.022(b)*

Enforcement

A board awarding a contract, and an agent or officer of the board, shall:

1. Take cognizance of complaints of all violations of Government Code Chapter 2258 committed in the execution of the contract; and

2. Withhold money forfeited or required to be withheld under Government Code Chapter 2258 from the payments to the contractor under the contract, except that the board may not withhold money from other than the final payment without a determination by the board that there is good cause to believe

that the contractor has violated Government Code Chapter 2258.

On receipt of information, including a complaint by a worker, concerning an alleged violation of Government Code 2258.023 [see Penalty for Noncompliance, below] by a contractor or subcontractor, a board shall make an initial determination as to whether good cause exists to believe that the violation occurred. A board must make its determination before the 31st day after the date the board receives the information. A board shall notify in writing the contractor or subcontractor and any affected worker of its initial determination.

Gov't Code 2258.051-.052(a)-(c)

Retainage and Reimbursement

A board shall retain any amount due under the contract pending a final determination of the violation. *Gov't Code 2258.052(d)*

Note: Arbitration of unresolved issues is governed by Government Code 2258.053-.055.

A board shall use any amounts retained under Government Code Chapter 2258 to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing rate as provided in the arbitrator's award. The board may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. *Gov't Code 2258.056(a)-(b)*

Penalty for Noncompliance

The contractor who is awarded a contract by a district or a subcontractor of the contractor shall pay not less than the rates determined under these provisions to a worker employed by it in the execution of the contract. A contractor or subcontractor who violates this provision shall pay to the district on whose behalf the contract is made, $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A board awarding a contract shall specify this penalty in the contract. A contractor or subcontractor does not violate this section if a board awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as required by these provisions. The board shall use any money collected under this provision to offset the costs incurred in the administration of Government Code Chapter 2258. *Gov't Code 2258.023*

Criminal Offense

An officer, agent, or representative of a district commits an offense if the person willfully violates or does not comply with a provision of Government Code 2258. *Gov't Code 2258.058(a)*

Required Workers' Compensation Coverage

A district shall ensure a contract for construction services required to be procured by a method in Government Code Chapter 2269 specifies the contractor's responsibilities for site safety and requires compliance with the requirement to provide workers' compensation insurance in accordance with Labor Code 406.096, below. *19 TAC 61.1040(e)(3)(D)*

A district that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project. Each subcontractor shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the district. *Labor Code 406.096(a)-(b)*

A district that enters into a building or construction contract on a project shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers' compensation coverage, using the language required by 28 Administrative Code 110.110(c)(7).
2. As part of the contract, using the language required by 28 Administrative Code 110.110(c)(7), require the contractor to perform the duties and responsibilities pertaining to required workers' compensation coverage as set out in 28 Administrative Code 110.110(d).
3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person beginning work on the project.
4. Obtain from the contractor a new certificate of coverage showing extension of coverage:
    a. Before the end of the current coverage period, if the contractor's current certificate shows that the coverage period ends during the duration of the project; and
    b. No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.

5. Retain certificates of coverage on file for the duration of the project and for three years thereafter.

6. Provide a copy of the certificate of coverage to the Texas Department of Insurance, Division of Workers' Compensation upon request and to any person entitled to a copy by law.

7. Use the language contained in 28 Administrative Code 110.110(c)(7) for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

28 TAC 110.110(c)

Exception — This coverage requirement does not apply to sole proprietors, partners, and corporate officers who meet the requirements of Labor Code 406.097(c), and who are explicitly excluded from coverage in accordance with Labor Code 406.097(a). *28 TAC 110.110(i)*

Definitions — "Persons providing services on the project" includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. "Services" includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets. *28 TAC 110.110(a)(7)*

"Project" includes the provision of all services related to a building or construction contract for a district. *28 TAC 110.110(a)(8)*

Criminal Offenses — For information on criminal offenses for violations of Education Code 44.031, see CH.

Enforcement Actions — Government Code Chapter 2269 may be enforced through an action for declaratory or injunctive relief filed not later than the 15th day after the date on which the contract is awarded. *Gov't Code 2269.452*

Defects in Facilities — A district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of a district facility financed by bonds shall provide the commissioner with written notice of the action by registered or certified mail, return re-

ceipt requested, not later than the 30th day after the date the action is filed. If the district fails to comply with this provision, the court or an arbitrator or other adjudicating authority shall dismiss the action without prejudice. The dismissal of an action under this provision extends the statute of limitations on the action for a period of 90 days.

The notice must include a copy of the petition and an itemized list of the defects in the design, construction, renovation, or improvement for which the district is seeking damages under the action.

In an action involving an instructional facility financed by bonds for which the district receives state assistance under Education Code Chapter 46, Subchapter A (Instructional Facilities Allotment), the commissioner may join in the action on behalf of the state to protect the state's share in the action.

A district that brings an action under these provisions shall use the net proceeds from the action for:

1. The repair of the defective design, construction, renovation, or improvement of the facility on which the action is brought, including the repair of any ancillary damage to furniture and fixtures;
2. The replacement of the facility on which the action is brought;
3. The reimbursement of the district for a repair or replacement; or
4. Any other purpose with written approval from the commissioner.

Education Code 46.008 applies to the repair. A district shall provide to the commissioner an itemized accounting of any repairs made.

The state's share resulting from an action brought under these provisions involving an instructional facility financed by bonds for which the school district receives state assistance under Education Code Chapter 46, Subchapter A is state property. The district shall send to the comptroller any portion of the state's share not used by the district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Education Code 48.272 applies to the state's share.

Definitions

"Net proceeds" means the difference between the amount recovered by or on behalf of a school district in an action, by settlement

or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.

"State's share" means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under Education Code Chapter 46, Subchapter A used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

Education Code 44.151

Attorney General Enforcement

If the attorney general believes that a district has violated or is violating Education Code 44.151(d), (e), or (f) (use of proceeds, accounting, and the state's share), the attorney general may, after providing at least two weeks' notice to the district, bring an action on behalf of the state to enjoin the district from violating those sections.

In such an action, the attorney general may request and the court may order any other appropriate relief that is in the public interest, including payment of:

1. A civil penalty in an amount not to exceed $20,000 for each violation;
2. The attorney general's reasonable costs for investigating and prosecuting the violation; or
3. If applicable, the amount of the state's share.

Education Code 44.152(a)-(b)

Attorney Fees

A governmental contract may not provide for the award of attorney's fees to a district in a dispute in which the district prevails unless the contract provides for the award of attorney's fees to each other party to the contract if that party prevails in the dispute.

"Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

Gov't Code 2252.904

Construction Liability Claims

To assert a claim against a contractor, subcontractor, supplier, or design professional for damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work in which the district has an interest, the district must comply

with Government Code Chapter 2272, which may not be waived. A purported waiver of Chapter 2272 is void. *Gov't Code 2272.002(a), .0025*

Compliance with Law

The Superintendent shall establish procedures that ensure that all school facilities within the District comply with applicable laws and local building codes.

Construction Contracts

Prior to advertising, the Board shall determine the project delivery/contract award method to be used for each construction contract valued at or above the competitive purchasing threshold established in law. To assist the Board, the Superintendent shall recommend the project delivery/contract award method that he or she determines provides the best value to the District. [See CV series generally and CBB(LEGAL) for requirements if federal funds are involved.]

For construction contracts valued at or above $5,000, the Superintendent shall also submit the resulting contract to the Board for approval. Lesser expenditures for construction and construction-related materials or services shall be at the discretion of the Superintendent and consistent with law and policy. [See also CH and CBB(LEGAL)]

Note: For provisions regarding delegation of authority for construction contracts in the event of a catastrophe, emergency, or natural disaster affecting the District, see CH(LOCAL).

Change Orders

Change orders permitted by law shall be approved by the Board or its designee prior to any changes being made in the approved plans or the actual construction of the facility.

Project Administration

All construction projects shall be administered by the Superintendent.

The Superintendent shall keep the Board informed concerning construction projects and also shall provide information to the general public.

Final Payment

The District shall not make final payments for construction or the supervision of construction until the work has been completed and the Board has accepted the work.

Table of Contents

Notice to Parents 3
Teacher Qualifications 3
Federally Required Notice — Lack of Credentials 3
State-Required Notice — Lack of Credentials 3
Professional Personnel 4
Certificate 4
Restriction on Employment of Uncertified Teacher 5
Compliance by District of Innovation 5
Plan Submitted to Commissioner 5
Waiver and Local Permit Available 5
License 5
School District Teaching Permit 6
Statement to Commissioner 6
Noncore Career and Technical Courses 6
Duration of Permit 7
Emergency Permit 7
Activation 7
General Eligibility Requirements 8
Specific Requirements for Initial Permits 9
Procedures for Initial Permit 10
Validity of Emergency Permit 11
One-Year Limitation 12
Renewal Requirements and Procedures 12
Nonrenewable Permits 13
Educator Consent 14
No Property Right 14
Unused Permits 14
Tutoring Program 14
Eligibility 14
Local Oversight and Reporting 15
Funding 15
Certification of Paraprofessional Employees 15
Federal Requirements for Teachers and Paraprofessionals 15
Qualifications Before December 10, 2015 15

Federal Requirements for Special Education Teachers 17
CPR and First Aid Certification 17
CPR and AED Certification 18
School Bus Drivers 18
Credentials 18
Pre-Employment Inquiries 18
Annual Evaluation 19
Disqualification 19
Employee Records 20
Professional Employees 20
Service Record 20
Access to Employee Records 20

Notice to Parents

Teacher Qualifications

As a condition of receiving assistance under Title I, Part A of the Elementary and Secondary Education Act (ESEA) (20 U.S.C. 6301 et seq.), a district shall, at the beginning of each school year, notify the parents of each student attending any school receiving such funds that the parents may request, and the district shall provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following:

1. Whether the student's teacher:
    a. Has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction;
    b. Is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived; and
    c. Is teaching in the field of discipline of the certification of the teacher.
2. Whether the child is provided services by paraprofessionals and, if so, their qualifications.

20 U.S.C. 6312(e)(1)(A)

Federally Required Notice — Lack of Credentials

A school that receives such federal funds shall also provide to each individual parent of a child who is a student in such school, with respect to such student, timely notice that the student has been assigned, or has been taught for four or more consecutive weeks by, a teacher who does not meet applicable state certification or licensure requirements at the grade level and subject area in which the teacher has been assigned. *20 U.S.C. 6312(e)(1)(B)(ii)*

State-Required Notice — Lack of Credentials

If a district assigns an inappropriately certified or uncertified teacher (as defined below) to the same classroom for more than 30 consecutive instructional days during the same school year, it shall provide written notice of the assignment to the parents or guardians of each student in that classroom.

A superintendent shall provide the notice not later than the 30th instructional day after the date of the assignment of the inappropriately certified or uncertified teacher. A district shall make a good-faith effort to ensure that the notice is provided in a bilingual form to any parent or guardian whose primary language is not English. A district shall retain a copy of the notice and make information relating to teacher certification available to the public on request.

An “inappropriately certified or uncertified teacher” includes an individual serving on an emergency certificate or an individual who does not hold any certificate or permit. It does not include an individual who is:

1. Certified and assigned to teach a class or classes outside his or her area of certification, as determined by State Board for Educator Certification (SBEC) rules specifying the certificate required for an assignment;
2. Serving on a certificate issued due to a hearing impairment;
3. Serving on a certificate issued pursuant to enrollment in an approved alternative certification program;
4. Certified by another state or country and serving on a certificate issued under Education Code 21.052;
5. Serving on a school district teaching permit; or
6. Employed under a waiver granted by the commissioner of education.

The state notice requirement does not apply if a school is required in accordance with Section 1006, Every Student Succeeds Act [20 U.S.C. Section 6312(e)(1)(B)(ii)], to provide notice to a parent or guardian regarding a teacher who does not meet certification requirements at the grade level and subject area in which the teacher is assigned, provided the school provides notice as required by that Act. [See Federally Required Notice—Lack of Credentials, above]

If the Texas Education Agency (TEA) has developed a model notice, the superintendent must use that model to provide the notice required under this section.

A local innovation plan may not provide for the exemption of a district designated as a district of innovation from this parental notification requirement. [See AF]

Education Code 12A.004(a)(4), 21.057; 19 TAC 231.1

Professional Personnel

Certificate

A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a district unless the person holds an appropriate certificate or permit. A person who desires to teach shall present the person’s certificate for filing with a district before the person’s contract with a board is binding.

A person is not required to hold a certificate under Education Code 21.0487 to be employed by a district as a Junior Reserve Officer Training Corps instructor.

An educator who does not hold a valid certificate may not be paid for teaching or work done before the effective date of issuance of a valid certificate.

Education Code 21.003(a), .0487(d), .053(a)–(b)

Restriction on Employment of Uncertified Teacher

Beginning with the 2026-27 school year, a district may not employ as a teacher of record for a course in the foundation curriculum (Education Code 28.002) a person who does not hold an appropriate certificate or permit required by SBEC. *Education Code 21.0032(a)*

Compliance by District of Innovation

A district that has adopted a local innovation plan for the 2026-27 school year that exempts the district from the applicable teacher certification requirements under Education Code 21.003 may employ as a teacher of record for a course other than a reading language arts or mathematics course in a grade level above grade five a person who does not hold an appropriate certificate or permit required by SBEC under Subchapter B. This provision expires September 1, 2027. *Education Code 21.003(a-2)*

Plan Submitted to Commissioner

On the receipt and approval of a plan submitted by a school district to the commissioner that provides a reasonable timeline and strategy to comply with the above restriction, the commissioner may allow the district to delay implementation of the requirement to employ certified teachers. This provision expires September 1, 2030. *Education Code 21.0032(a-1)*

Waiver and Local Permit Available

This requirement does not preclude a district from receiving a waiver under Education Code 7.56 (Waivers and Exemptions), or issuing a school district teaching permit under 21.055 (see School District Teaching Permit, below). *Education Code 21.003(b)*

License

A person may not be employed by a district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, licensed professional counselor, marriage and family therapist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession. A person may perform specific services within those professions for a district only if the person holds the appropriate credentials from the appropriate state agency.

A person employed by a district before September 1, 2011, to perform marriage and family therapy is not required to hold a license

as a marriage and family therapist as long as the person remains employed by the district.

Education Code 21.003(b)

School District Teaching Permit

A district may issue a school district teaching permit and employ as a teacher of record a person who does not hold a teaching certificate issued by SBEC on approval by the board of trustees.

To be eligible for a school district teaching permit, a person must:

1. Hold a baccalaureate degree; or
2. Have served at or been employed by the district as a paraprofessional for not less than 180 days during the preceding calendar year and be:
    a. Currently enrolled in a postsecondary program that could lead to a baccalaureate degree; and
    b. On track to earn a baccalaureate degree and receive a probationary certificate not later than the third anniversary of the date the person receives a school district teaching permit under this section.

Education Code 21.055(a)-(b)

Statement to Commissioner

Promptly after employing a person under a school district permit under the provision requiring a baccalaureate degree, a district shall send a written statement to the commissioner. This statement must identify the person, the person's qualifications as a teacher, and the subject or class the person will teach. The person may teach the subject or class pending action by the commissioner.

Not later than the 30th day after the commissioner receives a district's statement, the commissioner may inform the district that the person is not qualified to teach. The person may not teach if the commissioner finds that the person is not qualified. If the commissioner fails to act before the 30th day after receiving the statement, a district may issue the school district teaching permit and the person may teach the subject or class identified in the statement sent to the commissioner.

Education Code 21.055(c)–(d)

Noncore Career and Technical Courses

The following requirements do not apply to a person who will teach only noncore academic career and technical education courses:

1. The requirement to hold a baccalaureate degree;
2. The requirement that the district send a written statement to the commissioner identifying the person, the person's qualifi-

cations as a teacher, and the subject or class the person will teach; and

3. The requirement that the commissioner inform the district in writing if the commissioner finds the person to be not qualified to teach.

A board may issue a school district teaching permit to a person who will teach courses only in career and technical education based on qualifications certified by the superintendent. Qualifications must include demonstrated subject matter expertise such as professional work experience, formal training and education, holding an active professional relevant industry license, certification, or registration, or any combination of work experience, training and education, or industry license, certification, or registration, in the subject matter to be taught.

The superintendent shall certify to the board that a new employee has undergone a criminal background check and is capable of proper classroom management. A district shall require a new employee to obtain at least 20 hours of classroom management training and to comply with continuing education requirements as determined by the board.

A person may teach a career and technical education course immediately upon issuance of a permit. Promptly after employing a person who qualifies under Education Code 21.055(d-1), the board shall send to the commissioner a written statement identifying the person, the course the person will teach, and the person's qualifications to teach the course.

Education Code 21.055(d-1)

Duration of Permit

A school district teaching permit remains valid unless the district issuing the permit revokes it for cause. A person authorized to teach under a school district teaching permit issued by a particular district may not teach in another school district unless that other district complies with the permit-issuing provisions. *Education Code 21.055(e)*

Emergency Permit

Emergency permits are issued under the authority of SBEC. *19 TAC 230.71(a)*

Activation

A superintendent or designee who cannot secure an appropriately certified and qualified individual to fill a vacant position may activate an emergency permit for an individual who does not have one of the appropriate credentials for the assignment, as specified in 19 Administrative Code Chapter 231 (Requirements for Public School Personnel Assignments).

In order to activate an emergency permit, the superintendent or designee must:

1. Document locally the efforts the district has taken to employ an appropriately certified individual in the position for which an emergency permit is activated;

2. Apply for an emergency permit when a vacant position is filled with an uncertified or inappropriately certified individual who will serve as the teacher of record or will serve in the assignment for more than 30 consecutive instructional days. The application must be submitted to the TEA within 45 instructional days of the date of assignment;

3. Verify that the district maintains a support system, has assigned a trained mentor, and will provide release time as needed to assist the individual serving on an emergency permit. However, a district shall not be required to provide a mentor for a degreed, certified teacher assigned on an emergency permit if the teacher has one or more creditable years' experience within the district, as defined at 19 Administrative Code Chapter 153, Subchapter CC; and

4. Verify that the individual for whom the emergency permit is activated has been advised of the SBEC rules regarding permits and permit renewal requirements in 19 Administrative Code Chapter 230, Subchapter F.

19 TAC 230.71(d)

Temporary Vacancies

A district is not required to activate an emergency permit if an uncertified individual is assigned for a certified teacher who will be absent for more than 30 consecutive instructional days due to documented health-related reasons and has expressed the intention to return to the assignment. A district must, however, comply with the parent notification requirements above. *19 TAC 230.71(i)*

General Eligibility Requirements

An individual for whom an emergency permit is activated must meet the following criteria:

1. The individual must hold a bachelor's degree or higher from an accredited institution of higher education. [See 19 Administrative Code 230.75(1) for career and technical and trade and industrial education assignments.]

2. The individual must be at least 18 years of age.

3. The individual must be able to communicate and understand the English language sufficiently to use it easily and readily in

daily communication and teaching, as specified in 19 Administrative Code 230.11 (General Requirements).

4. The individual must be of good moral character. SBEC may refuse to authorize an emergency permit for an individual, applying the same standards that would be applied to the administrative denial of an applicant for certification under 19 Administrative Code 249.12 (Administrative Denial; Appeal).

5. The individual must submit fingerprints in accordance with 19 Administrative Code 232.35(c) (Submission of Required Information) and Education Code 22.0831. [See DBAA]

19 TAC 230.75

Specific Requirements for Initial Permits

An individual for whom an emergency permit is activated must:

1. Have completed the appropriate semester credit hours or equivalent contact hours required for the emergency permit sought as specified in 19 Administrative Code 230.77, or, for a degreed, certified teacher, have passed the appropriate content specialization portions of the appropriate certification examination required for the target certificate; and

2. Have satisfied the appropriate experience requirement specified in 19 Administrative Code 230.77 for the emergency permit sought.

19 TAC 230.77(a)

SBEC rules provide requirements for the following assignments:

1. Elementary grades (early childhood–grade 6) (general education).

2. Secondary grades (grades 7–12) (general education).

3. All grade levels (early childhood–grade 12) (general education).

4. Career and technical education programs.

5. Special populations, such as English language learners (ELLs) and students with special learning needs.

6. Other instructional and support personnel, such as school counselor, educational diagnostician, school librarian, and JROTC instructor.

19 TAC 230.77 (b)–(g)

Hardship Exception

An emergency permit may be authorized on a hardship basis for an individual who does not meet all eligibility requirements only if approval has been granted and email notification received from TEA staff. The district must:

1. Document local conditions requiring the assignment of an individual who does not meet emergency permit requirements;
2. Verify that the deficiencies for the certificate sought do not exceed 36 semester credit hours; and
3. Verify:
    a. That the individual will be enrolled in the first available course listed on the certification plan; or
    b. Registration for the next available administration of the appropriate content specialization portion of the certification examination for an individual who holds a valid Texas classroom teaching certificate and a bachelor's degree or higher from an accredited institution of higher education and is placed in an assignment requiring a different classroom teaching certificate.

19 TAC 230.71(h)

Holders of Intern or Probationary Certificates

Candidates who hold an intern certificate under the provisions of 19 Administrative Code 230.36 (Intern Certificates) or a probationary certificate under 19 Administrative Code 230.37 (Probationary Certificates) may be employed on an emergency permit during the validity of the intern certificate or probationary certificate, if the emergency permit is being issued in a certificate area not available through the educator preparation program that provided recommendation for the intern certificate or probationary certificate. *19 TAC 230.71(j)*

Procedures for Initial Permit

The superintendent or his or her designee or authorized representative must verify the individual's eligibility for the emergency permit [see General Eligibility Requirements and Specific Requirements for Initial Permits, above] and submit online to TEA the following information within 45 instructional days of assignment.

For all assignments (except career and technical education assignments based on skill and experience):

1. A completed online emergency permit application;
2. One of the following:
    a. A certification plan from an approved Texas educator preparation program (EPP); or

b. Verification of registration for an appropriate certification examination for a teacher that is already certified; and

3. The appropriate fee (payable by the school district).

For career and technical education assignments based on skill and experience:

1. A completed online emergency permit application;

2. A copy of the individual's statement of qualifications, approved by the certification officer of a Texas EPP;

3. Acceptable license, registration, or certification by a state-authorized or nationally recognized agency in an occupational area appropriate for the assignment;

4. A certification plan from an approved Texas EPP for the career and technical education certificate appropriate for the assignment; and

5. The appropriate fee (payable by the school district).

19 TAC 230.79

Validity of Emergency Permit

The validity date of an activated and authorized emergency permit is specified in 19 Administrative Code 230.97 (Effective Dates of Certificates and Permit Issuance).

An emergency permit is valid for the remainder of the school year for which it is activated and authorized by SBEC. The emergency permit must be submitted to TEA within 45 instructional days from the date of assignment. A permit authorized by SBEC is valid for service only in the requesting district and only for the assignments indicated on the emergency permit application.

Effective with the 2017–18 school year, the employment of an individual on an emergency permit, with the exception of the assignment as a JROTC instructor or a teacher of students with visual impairments may not exceed one school year in the same assignment. [See One-Year Limitation, below]

Prior to the 2017–18 school year, the individual may serve in a specific assignment no more than one additional school year beyond the initial emergency permit. To continue beyond the initial emergency permit year, the individual must comply with the renewal provisions specified in 19 Administrative Code 230.81. [See Renewal Requirements and Procedures, below]

Effective with the 2017–18 school year, to continue employment in the assignment beyond the validity of the initial emergency permit, the individual must hold the appropriate certificate, in accordance

with 19 Administrative Code, Chapter 231 (Requirements for Public School Personnel Assignments). An individual may not serve as a classroom teacher of record in the district for more than three school years without obtaining initial, standard certification.

19 TAC 230.73

One-Year Limitation

Effective with the 2017–18 school year, an emergency permit will limit an individual to one year of service and no renewal will be allowed.

Exceptions

The one-year limitation does not apply to individuals serving in the position of Junior Reserve Officer Training Corps (JROTC) instructor or teachers of students with visual impairments.

As indicated in 19 Administrative Code 230.77(g)(4)(B), emergency permits for JROTC instructors must be reissued every year.

Emergency permits for teachers of students with visual impairments referenced in 19 Administrative Code 230.77(f)(2)(B) may be renewed a maximum of two years.

19 TAC 230.71(b), (c)

Renewal Requirements and Procedures

Effective with the 2017–18 school year, these renewal provisions no longer apply for emergency permits, with the exception of teachers of students with visual impairments. *19 TAC 230.73(f)*

A superintendent, designee, or authorized representative may renew an emergency permit for the same assignment in the same district for which the initial emergency permit was activated.

No individual may continue in the same assignment for more than one school year of service on an emergency permit, except that emergency permits used fewer than 90 calendar days may be renewed for one additional year of service, if needed.

The total of semester credit hours or the equivalent contact hours required to obtain certification appropriate for the assignment shall determine the number of emergency permit renewals for which the individual may be eligible.

For six semester credit hours or less plus appropriate examination requirements, an individual is not eligible for renewal.

For seven semester credit hours or more plus appropriate examination requirements, an individual is eligible for one renewal.

The superintendent or his or her designee or authorized representative may renew an emergency permit provided the following requirements and procedures are met:

1. The emergency permit must be renewed for the same assignment in the same school district.
2. Official transcripts verifying completion of a minimum of six semester credit hours or documentation of completion of equivalent contact hours toward the appropriate target certificate must be placed in the individual's personnel file.
3. If the individual has not completed permit renewal requirements as indicated above, the superintendent or his or her designee must obtain hardship approval from the TEA prior to continuation of the assignment.
4. The appropriate renewal of the emergency permit application must be completed online prior to the beginning date of duties for the current school year.
5. The school district shall pay the appropriate fee.

19 TAC 230.81

Nonrenewable Permits

A superintendent or designee may activate a nonrenewable permit for an individual who has not completed the appropriate examination requirements specified in 19 Administrative Code 230.21 (Educator Assessment).

A nonrenewable permit may be activated for an individual who:

1. Has completed all course and degree requirements of a Texas EPP except for successful completion of all appropriate examination requirements. Nonrenewable permits activated for individuals in this category expire 12 months from the date of activation; or
2. Holds a Texas teacher certificate with an effective date before February 1, 1986, but has not revalidated the certificate for employment purposes by passing an examination. The individual must not have been employed in a Texas school district since the start of the 1985–86 school year. A nonrenewable permit activated for an individual in this category expires six months from the date of activation or at the end of the school year, whichever is less.

A nonrenewable permit may not be activated for an individual in the same assignment area for which another permit had previously been authorized.

The superintendent, designee, or authorized representative must verify that an individual is eligible for the permit and submit the following information within 45 calendar days of assignment:

1. An application for a nonrenewable permit completed before the effective date of the assignment; and
2. The appropriate fee (payable by the district).

19 TAC 230.83

Educator Consent

A certified teacher must consent to the activation of an emergency permit and be advised of the conditions of the emergency permit.

A teacher who refuses to consent to activation of an emergency permit may not be terminated or nonrenewed or otherwise retaliated against because of the teacher's refusal to consent to the activation of the emergency permit. However, a teacher's refusal to consent shall not impair a district's right to implement a necessary reduction in force or other personnel actions in accordance with local policy.

19 TAC 230.71(e)

No Property Right

An emergency permit is authorized for the district for a specific assignment and is not the property of the individual for whom the emergency permit was activated. *19 TAC 230.71(f)*

Unused Permits

If an emergency permit authorized by SBEC is not used, the district shall notify TEA staff by email. *19 TAC 230.71(g)*

Tutoring Program

A person may participate in a tutoring program to provide supplemental instruction to students in kindergarten through grade 12 on an individualized or small-group basis.

Eligibility

To participate in the program as a tutor, a person must:

1. Be an active or retired teacher;
2. Apply for the position in a manner specified by a nonprofit teacher organization approved by the commissioner for the purpose of participating in the tutoring program;
3. Designate in the application whether the person plans to provide tutoring:
    a. For compensation, on a volunteer basis, or both; and
    b. In person, online, or both; and
4. Not be included in the Do Not Hire Registry. [See DBAA]

If an active or retired teacher who has been approved for participation in the tutoring program contacts a school district to provide tutoring to students in the district and the district needs tutoring assistance, the district may:

1. If the teacher is providing tutoring services on a volunteer basis, use the volunteer tutoring services provided by the teacher; or

2. If the district has local, state, or federal funds for purposes of the tutoring program and the teacher is providing tutoring services for compensation, employ the teacher as a tutor.

Local Oversight and Reporting

The superintendent or designee shall:

1. Oversee the tutoring program within the district; and

2. Not later than the last day of each semester, submit a report to the board that includes, with respect to that semester:

   a. The number of active or retired teachers who contacted the district to offer tutoring services to students in the district; and

   b. The number of active or retired teachers who were used by the district as a tutor on a volunteer basis or employed by the district to provide tutoring services for compensation.

Funding

A school district may use any available local, state, or federal funds to provide compensation to a person participating in the program as a tutor who is providing tutoring for compensation under the program.

Education Code 33.913

Certification of Paraprofessional Employees

Educational aides shall be certified according to standards established by SBEC. *19 TAC 230.51*

Federal Requirements for Teachers and Paraprofessionals

Teachers and paraprofessionals working in a program supported with funds under Title I, Part A of the Elementary and Secondary Education Act (20 U.S.C. 6301 et seq.) shall meet applicable state certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification. *20 U.S.C. 6311(g)(2)(J), 6312(c)(6)*

The state's professional standards for paraprofessionals working in a program supported with Title I funds must include qualifications that were in place under former 20 U.S.C. 6319, as that section existed before December 10, 2015. *20 U.S.C. 6311(g)(2)(M)*

Qualifications Before December 10, 2015

Each district receiving assistance under Title I, Part A of the ESEA shall ensure that all paraprofessionals working in a program supported with those funds shall:

1. Be assigned only duties consistent with the following:

a. A paraprofessional may be assigned to:

(1) Provide one-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;

(2) Assist with classroom management, such as organizing instructional and other materials;

(3) Provide assistance in a computer laboratory;

(4) Conduct parental involvement activities;

(5) Provide support in a library or media center;

(6) Act as a translator; or

(7) Provide instructional services to students in accordance with items (b) and (c).

b. A paraprofessional may not provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher consistent with this section; and

c. A paraprofessional may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under this part, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school.

2. Regardless of a paraprofessional's hiring date, have earned a secondary school diploma or its recognized equivalent.

3. If hired after January 8, 2002, have one of the following credentials:

a. Completed at least two years of study at an institution of higher education;

b. Obtained an associate's (or higher) degree; or

c. Met a rigorous standard of quality and can demonstrate, through a formal state or local academic assessment:

(1) Knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(2) Knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

Receipt of a high school diploma is not sufficient to satisfy the formal academic assessment requirement.

The requirements at item 3, above, shall not apply to a paraprofessional:

1. Who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in programs under Title I, Part A by acting as a translator; or

2. Whose duties consist solely of conducting parental involvement activities.

Former 20 U.S.C. 6319 in effect before Dec. 10, 2015

Federal Requirements for Special Education Teachers

Each person employed as a special education teacher who teaches elementary school, middle school, or secondary school must:

1. Have obtained full state certification as a special education teacher [including participating in an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 C.F.R. 2005.56(a)(2)(ii) as in effect November 28, 2008], or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher;

2. Have not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

3. Hold at least a bachelor's degree.

20 U.S.C. 1412(a)(14)(C)

CPR and First Aid Certification

A district employee who serves as head director of a school marching band, head coach, or chief sponsor of an extracurricular athletic activity (including cheerleading) that is sponsored or sanctioned by the district or UIL must maintain and submit to the district proof of current certification in first aid and cardiopulmonary resuscitation (CPR) issued by the American Red Cross, the American Heart Association, or another organization that provides equivalent training and certification. A district shall adopt, in accordance with its professional development policy [see DMA], procedures for administering this requirement, including procedures for the time and

manner in which proof of current certification must be submitted. *Education Code 33.086*

CPR and AED Certification

Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other employee specified by the commissioner must receive and maintain certification in CPR and in the use of an automated external defibrillator (AED) from the American Heart Association, the American Red Cross, or a similar nationally recognized association. *Education Code 22.902(c)* [See DMA]

School Bus Drivers

Credentials

For purposes of the following provisions, a "school bus driver" is a driver transporting school children and/or school personnel on routes to and from school or on a school-related activity trip while operating a multifunction school activity bus, school activity bus, or school bus. *37 TAC 14.1* [See CNA]

At a minimum, to become employed and maintain employment status as a school bus driver, a person must meet the following requirements:

1. Be at least 18 years old.
2. Possess a valid driver's license designating a class appropriate (with applicable endorsement, if commercial driver license) for the gross vehicle weight rating and manufacturer's designed passenger capacity of the vehicle to be operated.
3. Meet the medical qualifications specified by the Department of Public Safety (DPS) at 37 Administrative Code 14.12. [See DBB]
4. Maintain an acceptable driving record in accordance with the minimum standards established by the DPS at 37 Administrative Code 14.14.
5. Maintain an acceptable criminal history record, secured from any law enforcement agency or criminal justice agency, and reviewed in accordance with the provisions of Education Code Chapter 22. [See DBAA]
6. Possess a valid Texas School Bus Driver Safety Training Certificate, as specified at 37 Administrative Code 14.35 or a valid Enrollment Certificate, as specified at 37 Administrative Code 14.36.

Transp. Code 521.022; 37 TAC 14.11, .12, .14

Pre-Employment Inquiries

An applicant for employment as a school bus driver must disclose to the district:

1. Any violations of motor vehicle laws or ordinances (other than parking violations) of which the applicant was convicted or forfeited bond or collateral during the three years preceding the date the application is submitted;

2. Any serious traffic violations, as defined by Transportation Code 522.003(25), of which the applicant was convicted during the ten years preceding the date the application is submitted; and

3. Any suspension, revocation, or cancellation of driving privilege that the applicant has ever received.

The district shall make an inquiry into the applicant's complete driving record, with DPS and with any state in which the applicant held a motor vehicle operator's license or permit within the past seven years. If no previous driving record is found to exist, the district must document its efforts to obtain such information and certify that no previous driving record exists for the individual.

The district shall review the applicant's driving record to determine whether that person meets minimum requirements, as described at 37 Administrative Code 14.14(d) (penalty points for convictions of traffic law violations and crash involvements).

37 TAC 14.14(b)

Annual Evaluation

A district shall, at least once every 12 months, make an inquiry into the complete driving record of each school bus driver it employs, with DPS and with any state in which the individual held a motor vehicle operator's license or permit during that time period. The district shall review the driving record to determine whether the individual meets the minimum requirements described at 37 Administrative Code 14.14(d) (penalty points for convictions of traffic law violations and crash involvements). *Transp. Code 521.022(d); 37 TAC 14.14(c)*

Disqualification

Any person who has accumulated ten or more penalty points shall be considered ineligible to transport students until such time as he or she may become qualified. A school bus driver who receives notice that his or her license, permit, or privilege to operate a motor vehicle has been revoked, suspended, or withdrawn shall notify the district of the contents of the notice before the end of the business day following the day the driver received it. A district shall not permit a disqualified driver to drive a school bus, school activity bus, or multifunction school activity bus. *37 TAC 14.14(g)*

Employee Records

Professional Employees

The following records on professional personnel must be readily available for review by the commissioner:

1. Credentials (certificate or license);
2. Service record(s) and any attachments;
3. Contract;
4. Teaching schedule or other assignment record; and
5. Absence from duty reports.

Service Record

The basic document in support of the number of years of professional service claimed for salary increment purposes and both the state's sick and personal leave program data for all personnel is the service record (form FIN-115) or a similar form containing the same information. It is the responsibility of the issuing district to ensure that service records are true and correct and that all service recorded on the service record was actually performed.

The service record must be validated by a person designated by a district to sign service records. The service record shall be kept on file at the district.

Former Employees

On request by a classroom teacher, librarian, school counselor, or nurse or by the school district employing one of those individuals, a district that previously employed the individual shall provide a copy of the individual's service record to the district employing the individual. The district must provide the copy not later than the 30th day after the later of:

1. The date the request is made; or
2. The date of the last day of the individual's service to the district.

The original service record, verified by the employee, shall be given to the employee upon request or sent to the next employing district. A district must maintain a legible copy for audit purposes. A scanned version of the original service record may be considered official if sent directly from one employing district to another employing district.

Education Code 21.4031; 19 TAC 153.1021(b), (d)

Access to Employee Records

With regard to public access to information in personnel records, custodians of such records shall adhere to the requirements of the Public Information Act. *Gov't Code Ch. 552* [See GBA]

Information in a personnel file is excepted from the requirements of the Public Information Act if the disclosure would constitute a clearly unwarranted invasion of personal privacy.

Except as provided below, an employee of a district shall choose whether to allow public access to information in the district's custody that relates to the employee's home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members.

Gov't Code 552.024, .102(a)

The social security number of an employee of a district in the custody of the district is confidential. A district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number. *Gov't Code 552.024(a-1), .147(a-1)*

Employee Right of Access

All information in the personnel file of a district employee shall be made available to that employee or the employee's designated representative as public information is made available under the Public Information Act. An employee or an employee's authorized representative has a special right of access, beyond the right of the general public, to information held by a district that relates to the employee and that is protected from public disclosure by laws intended to protect the employee's privacy interests.

A district may not deny to the employee or his or her representative access to information relating to the employee on the grounds that the information is considered confidential by privacy principles under the Public Information Act. A district may assert as grounds for denial of access other provisions of the Public Information Act or other laws that are not intended to protect the employee's privacy interests.

If a district determines that information in the employee's records is exempt from disclosure under an exception of Government Code Chapter 552, Subchapter C, other than an exception intended to protect the privacy interest of the requestor or the person whom the requestor is authorized to represent, it shall submit a written request for a decision to the attorney general before disclosing the information. If a decision is not requested, a district shall release the information to the requestor not later than the tenth day after the request for information is received.

Gov't Code 552.023, .102(a), .307

Criminal History Reviews

Definitions

"Criminal history clearinghouse" (clearinghouse) means the electronic clearinghouse and subscription service established by the Department of Public Safety (DPS) to provide criminal history record information (CHRI) to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the CHRI requested must consent to the release of the information. *Gov't Code 411.0845(a), (h)*

"Criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. *Gov't Code 411.082(2)*

"National criminal history record information" (NCHRI) means CHRI obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (FBI) under Government Code 411.087. *Education Code 22.081(2)*

"Request for CHRI" is the processing and entry of a person's complete set of fingerprints in DPS's tenprint database and the comparison of those prints to DPS's latent print database and if authorized the entry into FBI's tenprint and comparison to the FBI's latent print database. *37 TAC 27.172*

Participation in the Criminal History Clearinghouse

The purpose of the clearinghouse is to:

1. Provide authorized entities with the Texas and FBI fingerprint-based criminal history results.
2. Provide authorized entities with subscription and notification service to disseminate updated criminal history information.

Districts shall only submit a request for CHRI on a person who has authorized the access of their information.

Districts may subscribe to a person in the clearinghouse, if the entity has the authority to view the record. Entities shall unsubscribe from a person when it no longer has authority to view a record.

Districts shall validate their subscriptions in accordance with DPS policies. "Validation" is a process whereby the subscriber reviews a subscription to determine whether they are still authorized to receive CHRI on that individual and updates the subscription accordingly. Validations are required on a yearly basis.

Districts shall maintain compliance with the FBI Criminal Justice Information Services Security Policy. Districts shall allow DPS and the FBI to conduct audits of their clearinghouse accounts to pre-

vent any unauthorized access, use, or dissemination of the information.

37 TAC 27.171, .172(8), .174

Districts of Innovation

A prohibition, restriction, or requirement imposed by Education Code Chapter 22, Subchapter C (Criminal History Records) on an open-enrollment charter school applies to the same extent to a district of innovation or other charter entity.

The failure of a district of innovation to provide information required under Education Code 22.0832 may result in termination of the district 's designation as a district of innovation. [See AF]

Education Code 22.0815

Certified Educators

The State Board for Educator Certification (SBEC) shall review the NCHRI of a person who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by a district. *Education Code 22.0831(c)*

Noncertified Employees

Applicability

A person who is not an applicant for or holder of a certificate from SBEC and who was offered employment by a district on or after January 1, 2008, must submit to a NCHRI review before being employed. *Education Code 22.08339(a), (b)*

[For noncertified employees of a district or shared services arrangement hired before January 1, 2008, see All Other Employees, below.]

Information to DPS and TEA

Before or immediately after employing or securing the services of a noncertified employee, a district shall send or ensure that the person sends to DPS information that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

A district shall provide the Texas Education Agency (TEA) with the name of a noncertified employee. TEA shall examine the CHRI of the person and notify the district if the person may not be hired or must be discharged under Education Code 22A.157.

Education Code 22.0833(c), (g)

Employment Pending Review

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment. *19 TAC 153.1109(d)(2)*

Clearinghouse

A district shall obtain all CHRI that relates to a noncertified employee through the clearinghouse and shall subscribe to the CHRI

of that person. A district may require the person to pay any fees related to obtaining the CHRI. *Education Code 22.0833(e), (f)*

Substitute Teachers

For purposes of the CHRI review requirements, a "substitute teacher" is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

Information to DPS and TEA

A district shall send or ensure that a substitute teacher sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

A district shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the district if the person:

1. May not be hired or must be discharged as provided by Education Code 22A.157; or
2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

Employment Pending Review

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

Clearinghouse

A district shall obtain all CHRI that relates to a person to whom this section applies through the clearinghouse. A district may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0836; 19 TAC 153.1101(5), .1111(d)

Student Teachers

A district shall obtain from DPS and may obtain from any other law enforcement or criminal justice agency or a private consumer reporting agency, all CHRI that relates to a person participating in an internship consisting of student teaching to receive a teaching certificate.

A person may not perform any student teaching until:

1. The person provides to the district a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government; and
2. The district obtains CHRI, as described above.

A district may require a student teacher to pay any costs related to obtaining the CHRI.

Education Code 22.0835(a), (c), (d), (g)

All Other Employees

A district shall obtain CHRI that relates to an employee who is not subject to an NCHRI review from:

1. DPS;
2. A law enforcement or criminal justice agency; or
3. A private consumer reporting agency [see Consumer Credit Reports, below].

Education Code 22.083(a), (a-1)

Note: For criminal history record provisions regarding volunteers, see GKG. For provisions on employees of entities that contract with a district, see CJA.

Confidentiality of CHRI

CHRI that a district obtains from DPS, including any identification information that could reveal the identity of a person about whom CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of the district; and
2. May be disclosed or used by the district only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, “criminal history record” information does not refer to any specific document provided by DPS, but to the information contained, wholly or partly, in a document’s original form or any subsequent form or use.

A district or an individual may not confirm the existence or nonexistence of CHRI to any person who is not eligible to receive the information.

NCHRI obtained from the FBI may be released or disclosed only to a governmental entity or as authorized by federal law and regulations, federal executive orders, and federal policy.

Gov’t Code 411.084

Unauthorized Disclosure of CHRI

A person commits a Class B misdemeanor if the person knowingly or intentionally:

1. Obtains CHRI in an unauthorized manner, uses the information for an unauthorized purpose, or discloses the information to a person who is not entitled to the information; or

2. Violates a DPS rule adopted under Government Code Chapter 411, Subchapter F.

A person commits a second degree felony if the person:

1. Obtains, uses, or discloses CHRI for remuneration or for the promise of remuneration; or

2. Employs another person to obtain, use, or disclose CHRI for remuneration or for the promise of remuneration.

Gov't Code 411.085

A district may not release or disclose to any person CHRI obtained from the FBI. CHRI obtained by a district, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, TEA, or SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

An employee of a district may request from the district a copy of any CHRI related to that employee that the district has obtained from DPS. The district may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI.

A district is not prohibited from disclosing CHRI obtained from DPS in a criminal proceeding or in a hearing conducted by TEA or SBEC.

Gov't Code 411.097(d), (f), (g)

Destruction of CHRI

A district or an entity that contracts to provide services to a district, shall destroy CHRI that is obtained under Government Code 411.097 after the information is used for its authorized purpose. *Gov't Code 411.097(h)*

Confidentiality of Information Obtained from Applicant or Employee

A district may not release information collected about a person in order to obtain CHRI, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);

2. By court order; or

3. With the consent of the person who is the subject of the information.

In addition, the information is not subject to disclosure under Government Code Chapter 552.

The district shall destroy the information not later than the first anniversary of the date the information is received.

Education Code 22.08391

Refusal to Hire Convicted Applicants

A district shall discharge or refuse to hire an employee or applicant for employment if the district obtains information through a CHRI review that the employee or applicant has been:

1. Convicted of or placed on deferred adjudication community supervision for:
    a. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62;
    b. An offense under Penal Code 21.12, Improper Relationship Between an Educator and a Student, or Penal Code 43.24, Sale, Distribution, or Display of Harmful Material to a Minor;
    c. A felony offense under Penal Code Chapter 43, Public Indecency;
    d. A felony offense involving school property; or
    e. An offense under the laws of another state or federal law that is equivalent to items a, b, c, or d; or
2. Convicted of:
    a. A felony under Title 5, Penal Code; or
    b. An offense under the laws of another state or federal law that is equivalent to an offense under item 2a, above.

Exception

However, a district is not required to refuse to hire an applicant if the person committed an offense under Title 5, Penal Code and:

1. The date of the offense is more than 30 years before the date the person's employment will begin; and
2. The applicant for employment satisfied all terms of the court order entered on conviction.

Education Code 22A.157(a)-(b); 22A.201(a) [See DF for provisions on discharge of convicted employees.]

Certification to Commissioner

Each school year, the superintendent shall certify to the commissioner that the district has complied with the above provisions. *Education Code 22A.157(f)*

Sanctions

SBEC may impose a sanction on an educator who does not refuse to hire an employee if the educator knows or should have known, through a criminal history record information review, that the employee has criminal history described at Refusal to Hire Convicted Applicants, above. *Education Code 22A.157(e)*

SBEC may impose a sanction on an educator who does not refuse to hire an applicant when the applicant was employed in a public school and on the registry [see Do Not Hire Registry, below], fails to comply with Education Code 22A.055(e) [see Pre-employment Affidavit, below], or knew or should have known, through a CHRI review, that the applicant has been convicted of or placed on deferred adjudication community supervision for an offense under Education Code 22A.157 [see Refusal to Hire Convicted Applicants, above]. *19 TAC 249.15(b)(12)*

SBEC may impose a sanction on a superintendent who falsely or inaccurately certified to the commissioner that the district had complied with Education Code 22A.057. [See Certification to Commissioner, above] *19 TAC 249.15(b)(14)*

Termination for Failure to Disclose

A district may discharge an employee if the district obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to the district. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation). *Education Code 22A.157(d)* [See DF]

Consent for Release of Records and Pre-employment Affidavit

A person applying for employment with a school district must submit, using a form adopted by TEA, consent for release of the person's employment records and a pre-employment affidavit disclosing whether the person has ever been:

Disclosures Required

1. Investigated by a licensing authority or had a license, certificate, or permit denied, suspended, revoked, or subject to another sanction in this state or another state for conduct described by Education Code 22A.051(a)(2)(A), (B), (C), or (D) [see DHB and DHC];
2. Investigated by a law enforcement or child protective services agency for, or charged with, adjudicated for, or convicted of, an offense involving conduct described by Education Code 22A.051(a)(2)(A), (B), (C), or (D) [see DHB and DHC];
3. Included in the registry [see Do Not Hire Registry, below];
4. Employed or is currently employed by or has acted or is currently acting as a service provider for a public or private school; or

5. Terminated or discharged or has resigned, in lieu of being terminated or discharged, from a public or private school.

Education Code 22A.055(a)

A person who answers affirmatively concerning a required disclosure, above, must disclose in the affidavit all relevant facts known to the person pertaining to the matter, including, if applicable to the action, whether the allegation was determined to be true or false.

Continued Employment After Disclosure

A person is not precluded from being employed based on a disclosed allegation if the district determines based on the information disclosed in the affidavit that the allegation was false.

A determination that an employee failed to disclose information required to be disclosed by a person is grounds for termination of employment.

A district shall discharge or refuse to hire a person against whom a determination of failure to disclose information has been made.

Sanctions Relating to Failure to Disclose Information

SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed a person despite being aware that the person knowingly failed to disclose information.

A person commits an offense if the person fails to disclose information. An offense under this subsection is a Class B misdemeanor.

Education Code 22A.055(b)-(g)

Do Not Hire Registry

"Registry" means the registry of persons who are not eligible to be employed by or act as a service provider for an educational entity maintained under Education Code 22A.151. *Education Code 22A.001(7)*

Internet Portal

TEA shall develop and maintain an internet portal through which required reports may be confidentially and securely filed and TEA makes available:

1. The registry of persons who are not eligible to be employed in public schools; and

2. Information indicating that a person is under investigation.

Education Code 22A.155

Registry of Persons Not Eligible for Employment

TEA shall maintain and make available through its internet portal a registry of persons who are not eligible to be employed by a district.

A district shall discharge or refuse to hire or terminate a person listed on the registry.

The registry must list the following persons as not eligible to be employed by a district:

1. An employee of an open enrollment charter school determined by TEA under Education Code 22.0832 as a person who would not be eligible for educator certification based on their NCHRI;
2. A noncertified person determined by TEA to be not eligible for employment based on the person's CHRI, as provided by Education Code 22.0833 [see DBAA];
3. A person who is not eligible for employment based on CHRI received by TEA under Education Code 22A.201(b);
4. A person whose certification or permit, or application for a certification or permit, is denied or revoked by SBEC and who has not been issued a certificate or permit subsequent to that denial or revocation [see DHB];
5. A person whose certification or permit is suspended by SBEC for a reason besides Education Code 21.105(c), 21.160(c), or 21.210(c) (abandonment of contract) for the period of suspension;
6. A noncertified person who is determined by the commissioner under Education Code 22A.101 to have engaged in misconduct described by Education Code 22A.051(a)(2)(A), (B), (C), or (D) [see DHC]; and
7. A person temporarily included in the registry under Education Code 22A.051 or 22A.153 [see Temporary Inclusion in Registry, below] for the term of the placement.

The registry must include information indicating whether a person's listing in the registry expires. A prohibition applicable to a person included in the registry no longer applies to a person whose listing in the registry has expired, and, if applicable, whose certification or permit was reinstated.

The superintendent shall annually certify to the commissioner that the district has complied with these requirements.

Education Code 22A.151

Temporary Inclusion in Registry

The commissioner shall temporarily include a person in the registry if the commissioner determines that the person's continued employment at a district constitutes a continuing and imminent threat

to public welfare or if a person is arrested for an offense under Education Code 22A.201(a), a person not eligible for district employment [see Refusal to Hire Convicted Applicants, above]. *Education Code 22A.152-.153*

Commercial Driver License Drug and Alcohol Clearinghouse

The U.S. Department of Transportation (DOT) operates and maintains a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators in order to improve compliance with DOT's alcohol and controlled substances testing program applicable to commercial motor vehicle operators [see DHE] and to enhance the safety of roadways by reducing accidents and injuries involving the misuse of alcohol or use of controlled substances by operators of commercial motor vehicles. *49 U.S.C. 31306a*

Pre-employment Query Required

A district must not employ a driver subject to controlled substances and alcohol testing under 49 C.F.R. Part 382 to perform a safety-sensitive function without first conducting a pre-employment query of the federal Drug and Alcohol Clearinghouse to obtain information about the driver's previous test results.

Annual Query Required

A district must conduct a query of the federal Drug and Alcohol Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under 49 C.F.R. Part 382 to determine whether information exists about those employees.

Prohibition

A district may not allow a driver the district employs or intends to hire or use to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a prohibited test result.

Recordkeeping Required

A district must retain for three years a record of each query and all information received in response to each query made under this section.

49 C.F.R. 382.701

Consumer Credit Reports

Definitions

"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

"Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person's eligibility for employment.

"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on con-

sumers for the purpose of furnishing consumer reports to third parties.

"Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

15 U.S.C. 1681a

Obtaining Reports

A district may not procure a consumer report for employment purposes unless:

1. The district has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the consumer report.

Adverse Action

Before taking any adverse action based on the consumer report, a district shall provide the applicant or employee a copy of the consumer report and a written description of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

15 U.S.C. 1681b(b)(2)

Disposal of Records

A district must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

"Dispose" includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

16 C.F.R. 682.3

Prohibited Activities by Public Servants — State Law

"Public servant" means a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government, even if the person has not yet qualified for office or assumed his or her duties. *Penal Code 1.07(a)(41)(A), (E)*

Bribery

A person commits an offense if the person intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another, any benefit:

1. As consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant;
2. As consideration for a violation of a duty imposed by law on a public servant; or
3. That is a political contribution as defined by Election Code Title 15 or an expenditure made and reported in accordance with Government Code Chapter 305 (regarding registration of lobbyists), if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

"Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

Penal Code 36.01(3), .02

Illegal Gifts

A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the public servant's discretion. *Penal Code 36.08(d)*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under the provisions above may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(d), (i)*

Exceptions

Illegal Gifts does not apply to:

1. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully enti-

tled or for which the public servant gives legitimate consideration in a capacity other than as a public servant;

2. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

3. A benefit to a public servant required to file a statement under Government Code Chapter 572 or a report under Election Code Title 15 that is derived from a function in honor or appreciation of the recipient if:

   a. The benefit and the source of any benefit in excess of $50 is reported in the statement; and

   b. The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

4. A political contribution as defined by Election Code Title 15;

5. An item with a value of less than $50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;

6. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or

7. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

Penal Code 36.10

Honoraria and Expenses

A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the person's official position or duties. This provision does not prohibit a public servant from accepting transportation and lodging expenses or meals in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent those services are more than merely perfunctory. *Penal Code 36.07*

Abuse of Official Capacity

A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly violates a law relating to the public servant's office or employment, or misuses government property, services, person-

nel, or any other thing of value, belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment. *Penal Code 39.02(a)*

"Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant. *Penal Code 39.01(1)*

"Misuse" means to deal with property contrary to:

1. An agreement under which the public servant holds the property;
2. A contract of employment or oath of office of a public servant;
3. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
4. A limited purpose for which the property is delivered or received.

Penal Code 39.01(2)

Misuse of Official Information

A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office or employment and that has not been made public, the person:

1. Acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
2. Speculates or aids another to speculate on the basis of the information; or
3. As a public servant, including as a school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, the public servant discloses or uses information for a nongovernmental purpose that:

1. The person has access to by means of the person's office or employment; and
2. Has not been made public.

"Information that has not been made public" means any information to which the public does not generally have access, and that is pro-

hibited from disclosure under Government Code Chapter 552 (the Public Information Act).

Penal Code 39.06(a), (b), (d)

Instructional Materials Violations — Commissions

An administrator or teacher commits an offense if the person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated. *Education Code 31.152(a)*

Instructional Materials Violations — Conflict

An administrator or teacher commits an offense if the person accepts a gift, favor, or service that:

1. Is given to the person or the person's school;
2. Might reasonably tend to influence the person in the selection of instructional materials or technological equipment; and
3. Could not be lawfully purchased with state instructional material funds.

"Gift, favor, or service" does not include staff development, in-service, or teacher training; or ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

Education Code 31.152(b)–(d)

Instructional Materials Violations — Purchase and Distribution

A person commits a Class C misdemeanor offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials for the public schools. *Education Code 31.153*

Holding Civil Office

No person shall hold or exercise at the same time more than one civil office of emolument, except for offices listed in the constitutional provision, unless otherwise specifically provided. *Tex. Const., Art. XVI, Sec. 40(a)*

A position in or membership in the Texas military forces is not considered to be a civil office of emolument. *Gov't Code 437.203*

Individuals who receive all or part of their compensation either directly or indirectly from funds of the state of Texas and who are not state officers shall not be barred from serving as members of the governing bodies of school districts (other than those in which they are employed), cities, towns, or other local governmental districts. Such individuals may not receive a salary for serving as members of such governing bodies, except that a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water

district created under Section 59, Article XVI, or Section 52, Article III. *Tex. Const., Art. XVI, Sec. 40(b)*

Conflicts Disclosure Statement

A local government officer shall file a conflicts disclosure statement with respect to a vendor if the vendor enters into a contract with the district or the district is considering entering into a contract with the vendor; and the vendor:

1. Has an employment or other business relationship with the local government officer or a family member of the officer, and the business relationship results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that:
    a. A contract between the district and the vendor has been executed; or
    b. The district is considering entering into a contract with the vendor;
2. Has given to the local government officer or a family member of the officer one or more gifts, as defined by law, and the gift or gifts have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:
    a. A contract between the district and the vendor has been executed; or
    b. The district is considering entering into a contract with the vendor; or
3. Has a family relationship with the local government officer.

A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is a political contribution as defined by Title 15, Election Code, or food accepted as a guest.

Local Gov't Code 176.003(a)–(a-1)

Definitions

"Local government officer" means a member of the board; the superintendent; or an agent (including an employee) of the district who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Local Gov't Code 176.001(1), (4)*

"Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a per-

sonal, professional, or business relationship independent of the official status of the recipient. *Local Gov't Code 176.001(2-b)*

Note: For additional provisions and definitions relating to conflict disclosure statements, see BBFA(LEGAL).

Personal Services Performed by Administrators

Definition

"Administrator" means a person who has significant administrative duties relating to the operation of a school district, including the operation of a campus, program, or other subdivision of the district. This term does not include a school district employee whose employment contract responsibilities primarily include the in-classroom instruction of students or trustee of a school district.

Prohibition

An administrator may not receive any financial benefit for the performance of personal services for:

1. Any business entity that conducts or solicits business with the school district that employs the administrator;
2. Subject to the exception below, an education business that provides services regarding the curriculum or administration of any school district; or
3. Subject to the exception below, another school district, open-enrollment charter school, or regional education service center.

Exception

An administrator, other than a member of a board of managers, superintendent, or assistant superintendent, may receive a financial benefit for the performance of personal services for an education business that provides services regarding the curriculum or administration of any school district or the performance of personal services for another school district, open enrollment charter school, or regional education service center if:

1. A written contract describing the services to be performed by the administrator is provided to the board of trustees of the administrator's employing district; and
2. The board of trustees for the administrator's employing district votes to approve the contract after determining that:
    a. The contract will not harm the district;
    b. The arrangement does not present a conflict of interest; and
    c. The services to be performed by the administrator will be performed entirely on the administrator's personal time.

Disclosure Under the Texas Public Information Act

A contract provided to a board of trustees under Education Code 11.006(c) is subject to disclosure under Government Code Chapter 552 (Public Information Act).

Civil Penalty

An administrator who violates this section is liable to the state for a civil penalty in the amount of $10,000 for each violation.

Education Code 11.006

Note: See also CBB for requirements when federal funds are involved.

Note: For conflicts of interest and gifts and gratuities related to federal grants and awards, see CB and CBB.

Disclosure — General Standard

An employee shall disclose to his or her immediate supervisor a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.

Specific Disclosures

Substantial Interest

The Superintendent shall file an affidavit with the Board President disclosing a substantial interest, as defined by Local Government Code 171.002, in any business or real property that the Superintendent or any of his or her relatives in the first degree may have.

Any other employee who is in a position to affect a financial decision involving any business entity or real property in which the employee has a substantial interest, as defined by Local Government Code 171.002, shall file an affidavit with the Superintendent; however, the employee shall not be required to file an affidavit for the substantial interest of a relative.

Interest in Property

The Superintendent shall be required to file an affidavit disclosing interest in property in accordance with Government Code 553.002.

Annual Financial Management Report

The Superintendent, as the executive officer of the District, shall provide to the District in a timely manner information necessary for the District's annual financial management report.

[See BBFA]

Gifts

An employee shall not accept or solicit any gift, favor, service, or other benefit that could reasonably be construed to influence the employee's discharge of assigned duties and responsibilities. [See CAA, CB, and CBB]

Endorsements

An employee shall not recommend, endorse, or require students to purchase any product, material, or service in which the employee has a financial interest or that is sold by a company that employs or retains the District employee during nonschool hours. No employee shall require students to purchase a specific brand of school supplies if other brands are equal and suitable for the intended instructional purpose.

Sales

An employee shall not use his or her position with the District to attempt to sell products or services.

Nonschool Employment

An employee shall disclose in writing to his or her immediate supervisor any outside employment that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.

Private Tutoring

An employee shall disclose in writing to his or her immediate supervisor any private tutoring of District students for pay.

Personal Services Performed by an Administrator

An administrator, as defined in law, shall not receive any financial benefit for the performance of personal services except as permitted by and in accordance with law.

An administrator, other than a Superintendent or an assistant superintendent, who wishes to seek Board approval to perform personal services permitted by law shall submit that request to the Superintendent in accordance with administrative regulations.

Employment Policies

A board shall adopt a policy providing for the employment and duties of district personnel. The policy shall provide that:

1. A board employs and evaluates the superintendent;
2. A superintendent has sole authority to make recommendations to a board regarding the selection of all personnel, except that the board may delegate final authority for those decisions to the superintendent [see Superintendent Recommendation, below];
3. Each principal must approve each teacher or staff appointment to the principal's campus as provided by Education Code 11.202 [see DK and DP];
4. Notice will be provided of vacant positions [see Posting of Vacancies, below]; and
5. Each employee has the right to present grievances to the board. [See Grievances, below]

Education Code 11.1513(a), (d), (i)

Tax Identifier

A board shall adopt a policy prohibiting the use of social security numbers as employee identifiers other than for tax purposes [see Social Security Numbers, below]. *Education Code 11.1514* [See DBA]

Contract Positions

A board shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply. *Education Code 21.002(c)* [See DCB and DCC]

Delegation of Authority

A district's employment policy may specify the terms of district employment or delegate to the superintendent the authority to determine the terms of employment with the district. *Education Code 11.1513(c)* [For nepotism implications, see BBFB and DBE]

Availability

A district shall post on its internet website, if the district has a website, the employment policy adopted by the board under Education Code 11.1513(a) and the full text of any regulations referenced in the policy.

A district shall make available any forms referenced in its employment policy on an intranet website that is maintained by the district and accessible to district employees, or at a district administrative office designated by the district if the district does not maintain an intranet website.

Education Code 11.1513(k)

Internal Auditor

If a district employs an internal auditor, the board shall select the internal auditor and the internal auditor shall report directly to the board. *Education Code 11.170* [See CFC]

Superintendent Recommendation

A board may accept or reject a superintendent's recommendation regarding the selection of district personnel and shall include the board's acceptance or rejection in the minutes of the board's open meeting, in the certified agenda or tape recording of a closed meeting, or in the recording required under Government Code 551.125 or 551.127, as applicable. If a board rejects a superintendent's recommendation, the superintendent shall make alternative recommendations until the board accepts a recommendation. *Education Code 11.1513(b)*

Posting of Vacancies

A district's employment policy must provide that not later than the fifth school day before the date on which a district fills a vacant position for which a certificate or license is required as provided by Education Code 21.003 [see DBA], other than a position that affects the safety and security of students as determined by the board, the district must provide to each current district employee:

1. Notice of the position by posting the position on:
    a. A bulletin board at:
        (1) A place convenient to the public in the district's central administrative office, and
        (2) The central administrative office of each campus during any time the office is open; or
    b. The district's internet website, if the district has a website; and
2. A reasonable opportunity to apply for the position.

Education Code 11.1513(d)

Exception

If, during the school year, a district must fill a vacant position held by a teacher, as defined by Education Code 21.201 [see DCB], in less than five school days, the district must provide notice of the position in the manner described above as soon as possible after the vacancy occurs. However, a district is not required to provide the notice for five school days before filling the position or to provide a reasonable opportunity to apply for the position. *Education Code 11.1513(e)*

Grievances

A district's employment policy must provide each employee with the right to present grievances to the board. The policy may not restrict the ability of an employee to communicate directly with a member of the board regarding a matter relating to the operation of

a district, except that the policy may prohibit ex parte communication relating to:

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

Education Code 11.1513(i)–(j) [See DGBA]

Transfers A district's employment policy may include a provision for providing each current district employee with an opportunity to participate in a process for transferring to another school in or position with the district. *Education Code 11.1513(c)(3)* [See DK]

Daily Rate of Pay The employment policy must provide that for purposes of determining the amount of a reduction in the salary of a classroom teacher, full-time counselor, or full-time librarian for unpaid leave, the employee's daily rate of pay is computed by dividing the employee's annual salary by the number of days the employee is expected to work for that school year. *Education Code 11.1513(l)* [See DEC]

Contract Employees A district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a probationary contract, a continuing contract, or a term contract. A district is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. *Education Code 21.002*

Classroom Teacher "Classroom teacher" means an educator who is employed by a district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher's aide or a full-time administrator. *Education Code 5.001(2)*

Minimum Length of Contract A contract between a district and an educator must be for a minimum of ten months of service. An educator employed under a ten-month contract must provide a minimum of 187 days of service. *Education Code 21.401(a), (b)*

Proportionate Reduction If a district anticipates providing less than 180 days of instruction for students during a school year, as indicated by the district's academic calendar, the district may reduce the number of days of service proportionately. A reduction by the district does not reduce an educator's salary. *Education Code 21.401(c-1)*

Commissioner Waiver The commissioner of education may reduce the number of days of service if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools. A reduc-

tion by the commissioner does not reduce an educator's salary. *Education Code 21.401(c), 25.081(b)*

Educational Aides

A board shall establish a plan to encourage the hiring of educational aides who show a willingness to become certified teachers. *Education Code 54.363(f)*

Employment of Retirees

Monthly Certified Statement

A district shall submit to the Teacher Retirement System of Texas (TRS) a monthly certified statement of employment for all retirees employed by the district during each month of a school year. A district shall inform TRS of changes in status of the district that affect the district's reporting responsibilities.

Deadline

A district must submit the monthly certified statement and all required employer surcharges under 34 Administrative Code 31.3 (relating to Return-to-Work Employer Pension Surcharges) for each report month from September through July before the eleventh day of the month following the applicable report month. For the monthly certified statement for the report month of August, the employer shall submit the monthly certified statement and all required employer surcharges before the seventh day of September.

If the due date for submission of a monthly certified statement and required employer surcharges falls on a weekend or federal holiday, a district shall submit the monthly certified statement and required employer surcharges on the last business day prior to the due date.

Late Submissions

A district that fails to timely submit a monthly certified statement and all required employer surcharges must also pay all applicable interest and late fees. A district must pay to TRS the late fee established by rule for each business day that the monthly certified statement is past due.

Required Information

A monthly certified statement is not considered submitted to TRS until it is completed. To be complete, the monthly certified statement must include all the following information regarding a retiree employed by the employer during the report month:

1. The number of hours and days worked by the retiree;
2. Whether the retiree's employment qualifies as one or more of the following types:
    a. Substitute employment;
    b. One-half time or less employment;
    c. Employment as a tutor under Education Code 33.913;

d. Employment in a federally funded COVID-19 personnel position that meets the requirements of Government Code 824.6021 and 34 Administrative Code 31.16 (relating to Federally Funded COVID-19 Personnel);

e. Full-time employment;

f. Trial employment of a disability retiree for up to three months; or

g. Any combination of these types;

3. The amount of gross compensation paid to the retiree during the report month;

4. The total amount due under 34 Administrative Code 41.4 (relating to Employer Health Benefit Surcharge); and

5. Any other information requested by TRS.

An administrator of a district who is responsible for filing the statement, and who knowingly fails to file the statement, commits an offense.

Gov't Code 824.6022, 825.403(k); 34 TAC 31.2

Former Board Member Employment

A board member is prohibited from accepting employment with the district until the first anniversary of the date the board member's membership on a board ends. *Education Code 11.063* [See BBC]

New Hires

I-9 Forms

A district shall ensure that an employee properly completes section 1 — ''Employee Information and Verification'' — on Form I-9 at the time of hire.

A district must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:

1. Within three business days of initial hiring. If a district hires an individual for employment for a duration of less than three business days, the district must verify employment at the time of hire. A district shall not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times. When a district rehires an individual, the district may, in lieu of completing a new I-9, inspect a previously completed I-9 executed within three years of the date of rehire, to determine whether the individual is still eligible to work.

2. For an individual whose employment authorization expires, not later than the date of expiration.

8 C.F.R. 274a.2(b)(1)(ii), (iii), (vii), (viii)

New Hire Reporting

A district shall furnish to the Directory of New Hires (Texas Attorney General's Office) a report that contains the name, address, and social security number of each newly hired employee. The report shall also contain a district's name, address, and employer identification number.

A district may also provide, at its option, the employee's date of hire, date of birth, expected salary or wages, and the district's payroll address for mailing of notice to withhold child support.

A district shall report new hire information on a Form W-4 or an equivalent form, by first class mail, telephonically, electronically, or by magnetic media, as determined by the district and in a format acceptable to the attorney general.

Deadline

New hire reports are due:

1. Not later than 20 calendar days after the date a district hires the employee; or

2. In the case of a district transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.

Penalties

A district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.

42 U.S.C. 653a(b), (c); Family Code 234.101–.105; 1 TAC 55, Subch. I

Donations for Supplemental Educational Staff

A district shall accept from a parent-teacher organization or association recognized by the district a donation designated to fund supplemental educational staff positions at a school campus and spend the donation accepted for the designated purpose at the direction of and within the time period specified by the school campus for which the donation was designated. This provision expires September 1, 2025. *Education Code 11.156(c), (d)*

Social Security Numbers

A board shall adopt a policy prohibiting the use of the social security number of an employee of the district as an employee identifier other than for tax purposes. *Education Code 11.1514* [See DBA]

Federal Law

A district shall not deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number.

Exceptions

The federal law does not apply to:

1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;

2. Any disclosure to a district maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or

3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver's license, or motor vehicle registration law within a district's jurisdiction.

Statement of Uses

A district that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.

Privacy Act of 1974, Pub. L. No. 93-579, Sec. 7, 88 Stat. 1896, 1897 (1974)

Employment Assistance Prohibited

Federal Law

A district that receives Title I funds shall have regulations or policies that prohibit any individual who is a school employee, contractor, or agent, or a district, from assisting a school employee in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or district knows, or has probable cause to believe, that such school employee engaged in sexual misconduct regarding a minor or student in violation of the law.

This requirement shall not apply if the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the implementing regulations under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations; and:

1. The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investi-

gated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee engaged in sexual misconduct regarding a minor or student in violation of the law;

2. The school employee has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or

3. The case or investigation remains open and there have been no charges filed against, or indictment of, the school employee within four years of the date on which the information was reported to a law enforcement agency.

20 U.S.C 7926 [See also CJ]

State Law

SBEC may suspend or revoke a certificate, impose other sanctions against the person, or refuse to issue a certificate to the person if:

1. The person assists another person in obtaining employment at a school district, private school, or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and

2. The person knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law.

The commissioner may require a school district to revoke or decline to issue a school district teaching permit under Education Code 21.055 issued to or requested by a person subject to SBEC action above.

Education Code 21.0581; 19 TAC 249.15(b)(13)

Minimum Salary Schedule — Educators

A district shall pay each classroom teacher, full-time librarian, full-time school counselor, or full-time nurse not less than the minimum monthly salary, based on the employee's level of experience, specified in Education Code 21.402 and 19 Administrative Code 153.1021.

Definitions

Classroom Teacher

"Classroom teacher" means an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting, focusing on the delivery of the Texas Essential Knowledge and Skills, and who holds the relevant certificate from the State Board for Educator Certification (SBEC). Although noninstructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment, such as instructional planning and transition between instructional periods, should be applied to creditable classroom time.

Librarian

"Librarian" means an educator who provides full-time library services and holds the relevant certificate from SBEC.

School Counselor

"School counselor" means an educator who provides full-time counseling and guidance services and holds the relevant certificate from SBEC.

Nurse

"Nurse" means an educator employed to provide full-time nursing and health-care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

Full-Time

"Full-time" means contracted employment for at least ten months (187 days) for 100 percent of the school day, in accordance with the definitions of school day in Education Code 25.082, employment contract in Education Code 21.002, and school year in Education Code 25.081.

19 TAC 153.1022(a)

Placement on Salary Schedule

The commissioner's rules determine the experience for which a teacher, librarian, school counselor, or nurse is to be given credit in placing the teacher, librarian, school counselor, or nurse on the minimum salary schedule. A district shall credit the teacher, librarian, school counselor, or nurse for each year of experience, whether or not the years are consecutive. *Education Code 21.402(a), .403(c); 19 TAC 153.1022*

Employees Formerly on Career Ladder

A teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994-95 school year as long as the teacher or librarian is employed by the same district.

In addition, a teacher or librarian who was on level two or three of the career ladder is entitled, as long as he or she is employed by the same district, to placement on the minimum salary schedule according to the guidelines at Education Code 21.403(d). *Education Code 21.402(f), .403(d)*

Pay Increases

A district shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. *Tex. Const. Art. III, Sec. 53*

Public Hearing — Contract Employees

A district may not pay an employee or former employee more than an amount owed under a contract with the employee unless the district holds at least one public hearing. Notice of the hearing must be given in accordance with notice of a public meeting under the Texas Open Meetings Act [see BE].

The board must state the following at the public hearing:

1. The source and exact amount of the payment;
2. The reason the payment is being offered including the public purpose that will be served by making the payment; and
3. The terms for distribution of the payment that effect and maintain the public purpose.

Local Gov't Code 180.007

Severance Pay

A district that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an employee must include:

1. A requirement that severance pay that is paid from public money may not exceed the amount of compensation, at the rate at the termination of employment or the contract, the employee would have been paid for 20 weeks, excluding paid time off or accrued vacation leave; and
2. A prohibition of the provision of severance pay when the employee is terminated for misconduct.

Definitions

"Misconduct" means an act or omission by any employee of a political subdivision in the performance of the employee's duties that the school board determines to be misconduct. The term includes any finding of criminal conduct.

"Severance pay" means a dismissal or separation income paid on termination of the employment of an employee that is in addition to

the employee's usual earnings from the employer at the time of termination.

Website Posting — A political subdivision shall post each severance agreement in a prominent place on the political subdivision's internet website.

Application — These requirements apply to an action brought against a district by an employee of the district arising from the termination of the person's employment. A court may not issue a writ of execution or mandamus in connection with a judgment in the action if the judgment does not comply with this section.

Local Gov't Code 180.011 [For provisions related to severance agreements for independent contractors, see CJ.]

Salary Advances and Loans — A district shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)*

Designation of Compensation for Benefits — An employee who is covered by a cafeteria plan or who is eligible to pay health-care premiums through a premium conversion plan may elect to designate a portion of the employee's compensation to be used as health-care supplementation. The amount designated may not exceed the amount permitted under federal law. *Education Code 22.103*

Use — An employee may use the compensation designated for health-care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health-care premiums through a premium conversion plan. *Education Code 22.106*

Annual Election — Each school year, an active employee must elect in writing whether to designate a portion of the employee's compensation to be used as health-care supplementation. The election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. *Education Code 22.105*

Definition — For purposes of the designation of compensation as health-care supplementation, "employee" means an active, contributing member of the Teacher Retirement System (TRS) who:

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

ance) or Chapter 1601 (state university employee health insurance); and

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

Education Code 22.101(2)

TRS Contributions for New Hires

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

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

On a monthly basis, a district shall:

1. Certify to TRS the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments under this section for the payroll periods; and

2. Retain information, as determined by TRS, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

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

Gov't Code 825.4041

TRS Surcharge for Rehired Retirees

TRS Fund Contributions

During each payroll period for which a retiree is reported, a district shall contribute to the retirement system for each retiree reported an amount based on the retiree's salary equal to the sum of:

1. The current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and

2. The current contribution amount authorized by the General Appropriations Act that the state would contribute for that retiree if the retiree were an active, contributing member.

Gov't Code 825.4092(b)

Health Insurance Contributions

In addition, each payroll period and for each rehired retiree who is enrolled in TRS Care (retiree group health insurance), a district shall contribute to the TRS Care trust fund an amount established by TRS. In determining the amount to be contributed by the district, TRS shall consider the amount a retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers. *Gov't Code 825.4092(c); Insurance Code 1575.204(b)*

Exception

A district is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005. *Gov't Code 825.4092(e)*

Notice Regarding Earned Income Tax Credit

Not later than March 1 of each year, a district shall provide employees with information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;
2. Electronically at the employee's last known email address;
3. Through a flyer included, in writing or electronically, as a payroll stuffer; or
4. By first class mail to the employee's last known address.

A district may not satisfy this requirement solely by posting information in the workplace.

In addition, a district may provide employees with IRS publications and forms, or information prepared by the comptroller, relating to the earned income tax credit.

Labor Code 104.001-.003

Decreasing Pay

The commissioner has held that a district may reduce educator compensation if it gives sufficient warning of a possible reduction in pay when educators can still unilaterally resign from their contracts. A sufficient warning must be both formal enough and specific enough to give educators a meaningful opportunity to decide whether to continue employment with a district. *Brajenovich v. Alief*

Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 021-R1O-1106 (2009)

Widespread Salary Reductions

The following provisions apply only to a widespread reduction in the amount of annual salaries paid to classroom teachers in a district based primarily on district financial conditions rather than on teacher performance.

For any school year in which a district has reduced the amount of the annual salaries paid to classroom teachers from the amount paid for the preceding school year, the district shall reduce the amount of the annual salary paid to each district administrator or other professional employee by a percent or fraction of a percent that is equal to the average percent or fraction of a percent by which teacher salaries have been reduced.

Education Code 21.4032

A board may not reduce salaries until the district has complied with the requirements at Education Code 21.4022 [see Salary Reduction/Furlough Process, below]. *Education Code 21.4022*

Furlough Program

In accordance with district policy [see DFFA], a board may implement a furlough program and reduce the number of days of service otherwise required under Education Code 21.401 [see DC] by not more than six days of service during a school year if the commissioner certifies that the district will be provided with less state and local funding for that year than was provided to the district for the 2010-11 school year. *Education Code 21.4021(a)*

A board may not implement a furlough program until the district has complied with the requirements at Education Code 21.4022 [see Salary Reduction/Furlough Process, below]. *Education Code 21.4022*

Funding Levels

Not later than July 1 of each year, the commissioner shall determine for each district whether the estimated amount of state and local funding per student in weighted average daily attendance to be provided to the district under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the district for the 2010-11 school year. If the amount estimated to be provided is less, the commissioner shall certify the percentage decrease in funding to be provided to the district. *Education Code 48.010*

Salaries

Notwithstanding Education Code 21.402 (minimum salary schedule), a board may reduce the salary of an employee who is furloughed in proportion to the number of days by which service is reduced. Any reduction in the amount of the annual salary must be

equally distributed over the course of the employee's current contract with the district.

Furlough Days A furlough program must subject all contract personnel to the same number of furlough days. An educator may not be furloughed on a day that is included in the number of days of instruction required under Education Code 25.081 [see EB]. Implementation of a furlough program may not result in an increase in the number of required teacher workdays. An educator may not use personal, sick, or any other paid leave while the educator is on a furlough.

Contract Resignation If a board adopts a furlough program after the date by which a teacher must give notice of resignation from a probationary, term, or continuing contract [see DFE], an employee who subsequently resigns is not subject to sanctions imposed by SBEC.

No Appeal A decision by a board to implement a furlough program is final and may not be appealed and does not create a cause of action or require collective bargaining.

Education Code 21.4021

Salary Reduction / Furlough Process A board may not implement a furlough program under Education Code 21.4021 or reduce salaries until the district has complied with the requirements below.

Employee Involvement A district must use a process to develop a furlough program or other salary reduction proposal, as applicable, that:

1. Includes the involvement of the district's professional staff; and
2. Provides district employees with the opportunity to express opinions regarding the furlough program or salary reduction proposal, as applicable, at the public meeting described below.

Public Meeting A board must hold a public meeting at which the board and district administration present:

1. Information regarding the options considered for managing the district's available resources, including consideration of a tax rate increase and use of the district's available fund balance;
2. An explanation of how the district intends, through implementation of a furlough program or salary reductions, as applicable, to limit the number of district employees who will be discharged or whose contracts will not be renewed. Any explanation of a furlough program must state the specific number of furlough days proposed to be required; and

3. Information regarding the local option residence homestead exemption.

The public and district employees must be provided with an opportunity to comment at the public meeting.

Education Code 21.4022

Incentive Grants — Contract Provision

A district shall provide in employment contracts that qualifying employees may receive an incentive payment under an awards program established under Education Code Chapter 21, Subchapter O (Educator Excellence Award Program and Educator Excellence Innovation Program) if the district participates in the program. A district shall indicate that any incentive payment distributed is considered a payment for performance and not an entitlement as part of an employee's salary. *Education Code 21.415*

Educator Excellence Innovation Program

The Educator Excellence Innovation Program (EEIP) is a grant program under which a district may receive a competitive grant for the purposes of systematically transforming educator quality and effectiveness. The Texas Education Agency (TEA) will give priority to districts that receive Title I funding and have at a majority of district campuses a student enrollment that is at least 50 percent educationally disadvantaged.

Eligibility

A district is eligible to apply for EEIP grant funds if the district:

1. Completes and submits a Notice of Intent to Apply to TEA by the date established by the commissioner of education;
2. Complies with all assurances in the Notice of Intent to Apply and grant application;
3. Participates in the required technical assistance activities established by the commissioner, including establishing leadership teams, master teachers, mentor teachers, and instructional coaches and developing career pathways;
4. Agrees to participate for four years; and
5. Complies with any other activities set forth in the program requirements.

An eligible district must submit an application in a form prescribed by the commissioner. Each eligible applicant must meet all deadlines, requirements, and assurances specified in the application. The commissioner may waive any eligibility requirements as specified in 19 Administrative Code 102.1073.

Local Plan

An eligible district that intends to participate in the EEIP shall submit a local educator excellence innovation plan to TEA. A local educator excellence innovation plan must address the elements at 19 Administrative Code 102.1073(e)(2).

A district must act pursuant to its local board policy [see DEAA (LOCAL)] for submitting a local educator excellence innovation plan and grant application to TEA. A local decision to approve and

submit a plan and grant application may not be appealed to the commissioner.

A district may renew its local educator excellence innovation plan for three consecutive school years without resubmitting a full grant application to TEA. With TEA approval, a district may amend its local plan in accordance with 19 Administrative Code 102.1073(c) and (h) for each school year the district receives a program grant.

Use of Grant Funds

A district may use grant funds only to carry out purposes of the program as described at Education Code 21.7011, in accordance with the district's local plan, which may include the following specific methods or procedures:

1. Implementation and administration of a high-quality mentoring program for teachers in the first three years of classroom teaching using mentors who meet the qualifications prescribed by Education Code 21.458 [see Mentor Teachers, below];
2. Implementation of a teacher evaluation system using multiple measures that include:
    a. The results of classroom observation, which may include student comments;
    b. The degree of student educational growth and learning; and
    c. The results of teacher self-evaluation;
3. To the extent permitted under Education Code Chapter 25, Subchapter C, restructuring of the school day or school year to provide for embedded and collaborative learning communities for the purpose of professional development [see EC];
4. Establishment of an alternative teacher compensation or retention system; and
5. Implementation of incentives designed to reduce teacher turnover.

Waiver Request

A district may apply to the commissioner in writing for a waiver to exempt the district or one or more district campuses from one or more of the statutory sections listed at Education Code 21.7061(a).

The application for the waiver must demonstrate:

1. Why waiving the identified section of the Education Code is necessary to carry out the purposes of the program;

2. Approval for the waiver by a vote of a majority of the members of the board;

3. Approval for the waiver by a vote of a majority of the educators employed at each campus for which the waiver is sought; and

4. Evidence that the voting occurred during the school year and in a manner that ensured that all educators entitled to vote had a reasonable opportunity to participate in the voting.

Neither the board nor the superintendent may compel a waiver of rights under Education Code 21.7061.

Not later than April 1 of the year in which the waiver application is submitted, the commissioner shall notify the district in writing whether the application has been granted or denied. A waiver expires when the waiver is no longer necessary to carry out the purposes of the program, in accordance with the district's local educator excellence innovation plan.

Education Code Ch. 21, Subch. O; 19 TAC 102.1073

Local Optional Teacher Designation System

A district may designate a classroom teacher as a master, exemplary, recognized, or acknowledged teacher for a five-year period based on the results from single year or multiyear appraisals [see DNA]. *Education Code 21.3521(a)*

Commissioner's Rules

The commissioner's rules specify the requirements for districts to implement local teacher designation systems, including:

1. Teacher eligibility;

2. Application procedures and approval process;

3. System expansion, spending modifications, and changes;

4. Monitoring and annual program submission of approved local designation systems;

5. Continuing approval and renewal; and

6. Funding.

19 TAC 150.1012

Standards

The commissioner's rules establish performance and validity standards for each local optional teacher designation system that:

1. Must provide a mathematical possibility that all teachers eligible for a designation may earn the designation; and

2. May not require a district to use an assessment instrument adopted under Education Code 39.023 to evaluate teacher performance.

Education Code 21.3521(b); 19 TAC 150.1014

Teacher Incentive Allotment

For each classroom teacher with a local optional teacher designation, a district is entitled to an allotment, adjusted by high needs and rural factors, as determined under Education Code 48.112.

A district shall annually certify that:

1. Funds received were used as follows:

    a. At least 90 percent was used for the compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed; and

    b. Any other funds were used for costs associated with implementing the local optional teacher designation system, including efforts to support teachers in obtaining designations; and

2. The district prioritized high needs campuses in the district in using funds.

Education Code 48.112(c), (i)

Nationally Board Certified Designation

A classroom teacher that holds a National Board Certification issued by the National Board for Professional Teaching Standards may be designated as nationally board certified in accordance with the commissioner's rules for eligibility. This designation is valid for a five-year period, regardless of whether the State Board for Educator Certification (SBEC) revokes authorization for a nationally board certified teacher designation. *Education Code 21.3521(c)-(c-1); 19 TAC 150.1013*

Enhanced Teacher Incentive Allotment Systems

Each school year, the commissioner shall, using criteria developed by the commissioner, designate as enhanced teacher incentive allotment system school districts that implement comprehensive school evaluation and support systems. The criteria developed by the commissioner must require a district to:

1. For principals and assistant principals, implement:

    a. A strategic evaluations system aligned with the district's or school's teacher designation system; and

    b. A comprehensive system based on performance;

2. Ensure that under the district's teacher designation system substantially all classroom teachers, regardless of the grade level or subject area to which the teacher is assigned, are eligible to earn a designation under Education Code 21.3521(a);

3. Implement for all classroom teachers a compensation plan based on performance that:

   a. Uses a salary schedule that differentiates among classroom teachers based on staff appraisals; and

   b. Does not include across-the-board salary increases for classroom teachers except for periodic changes to the district's or school's salary schedule to adjust for significant inflation and;

4. Implement a locally designed plan to place highly effective teachers at high needs campuses and in accordance with Education Code 28.0062(a)(3).

The commissioner may designate a school district as an enhanced teacher incentive allotment system only if the district has implemented a local optional teacher designation system under Education Code 21.3521.

The commissioner may remove a school district's designation as an enhanced teacher incentive allotment system if the commissioner determines the district no longer meets the criteria for the designation.

Education Code 21.3521(d-1)-(d-3)

For a district that is designated as an enhanced teacher incentive allotment system under Education Code 21.5321(d-1), the commissioner shall increase the amount to which the district is entitled under Education Code 48.112 by multiplying that amount by 1.1. *Education Code 48.112(g-1)*

For a district whose allotment increased under Education Code 48.112(g-1), the district must annually certify the amount by which the allotment was increased under Education Code 48.112(g-1) was used to meet the criteria to maintain a designation as an enhanced teacher incentive allotment system under Education Code 21.3521(d-1). *Education Code 48.112(i)(B)*

Technical Assistance from TEA

TEA shall develop and provide technical assistance for districts that request assistance in implementing a local optional teacher designation system listed in Education Code 21.3521(e). *Education Code 21.3521(e)*

	From funds appropriated or otherwise available for this purpose, TEA shall establish and administer a grant program to provide money and technical assistance as described in law. *Education Code 21.3522*
No Property Right	A teacher has no vested property right in a teacher designation assigned under a local optional teacher designation system. A teacher designation is void in the determination that the designation was issued improperly, and the Administrative Procedure Act does not apply to the voiding of a local optional teacher designation. *Education Code 21.3521(f)*
Evaluations	TEA shall periodically conduct evaluations of the effectiveness of the local optional teacher designation systems and the teacher incentive allotment and report the results of the evaluations to the legislature. A district that has implemented a local optional teacher designation system or received funds under the teacher incentive allotment shall participate in the evaluations. *Education Code 21.3521(g)*
Teacher Retention Allotment	A school district is entitled to an annual allotment for each classroom teacher who is employed by or contracts with the district for which the allotment is provided as determined under Education Code 48.158(b). "Classroom teacher," for purposes of this allotment, is defined by Education Code 5.001, except the term also includes a person who is not required to hold a certificate under Subchapter B, Chapter 21 who otherwise meets the definition of classroom teacher under Education Code 5.001, and a person employed by an entity with which a school district has entered into a contract who otherwise meets the definition of a classroom teacher under Education Code 5.001. *Education Code 48.158(a)-(b)*
Use of Teacher Retention Allotment for 2025-26	For the 2025-26 school year, a school district shall use money received under the Teacher Retention Allotment to increase the salary provided to each classroom teacher for which the district is entitled to funding under the Teacher Retention Allotment for that year over the salary the teacher received or would have received if the teacher was employed by or contracted with the district in the 2024-25 school year by at least the amount received per classroom teacher under the Teacher Retention Allotment. *Education Code 48.158(c)(1)*

Use of Teacher Retention Allotment for 2026-27 and Beyond	For the 2026-27 and each subsequent school year, a school district shall use money received under the Teacher Retention Allotment to maintain the salary increases for classroom teachers provided under for the 2025-26 school year, above. Any additional funding generated for a school district under this section may only be used for the compensation of classroom teachers who are employed by or contract with the district and who have three or more years of experience. *Education Code 48.158(d)*
Use of Teacher Retention Allotment by Enhanced TIA Systems	For the 2025-26 school year, if the district is applying to be designated as an enhanced teacher incentive allotment system, the district shall use the money received for the Teacher Retention Allotment to increase the salaries of classroom teachers for the year based on performance. A school district that has been designated as an enhanced teacher incentive allotment system for the applicable school year may use money received under the Teacher Retention Allotment to provide salaries to classroom teachers in accordance with the district's compensation plan. *Education Code 48.158(c)(2), (e)*
Support Staff Retention Allotment	A school district is entitled to an annual allotment of $45 for each student in adjusted average attendance, as defined in Education Code 48.1581(b). For the 2025-26 school year, a district shall use this allotment to increase the salaries provided to non-administrative staff. For the 2026-27 and each subsequent school year, a district shall use this allotment to maintain these salary increases. Any additional money the district receives under this section may only be used for the compensation of non-administrative staff. *Education Code 48.1581(c)* "Non-administrative staff" includes a full-time or part-time employee who is not eligible for a salary increase from the Teacher Retention Allotment, above, including: a teacher not eligible for a salary increase under the Teacher Retention Allotment, above, a librarian, a school nurse, a teacher's assistant, a member of the custodial staff, a member of the food services staff, a bus driver, an administrative assistant, and other support staff. "Non-administrative staff" does not include a superintendent of a school district or other administrator serving as educational leader and chief executive officer, an assistant superintendent or a person in an equivalent role, a principal or assistant principal, or an employee in a centralized supervisory role. *Education Code 48.1581(a)*

Use of Staff Retention Allotment for 2025-26

For the 2025-26 school year, a school district shall use money received under Education Code 48.1581(c) to increase the salaries provided to non-administrative staff. *Education Code 48.1581(d)*

Use of Staff Retention Allotment for 2026-27 and Beyond

For the 2026-27 and each subsequent school year, a school district shall use money received under Education Code 48.1581(c) to maintain the salary increases provided under Education Code 48.1581(d). Any additional money the district receives under this section may only be used for the compensation of non-administrative staff. *Education Code 48.1581(e)*

Mentor Teachers

A district may assign a mentor teacher to each classroom teacher who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned. A teacher assigned as a mentor must:

1. To the extent practicable, teach in the same school;
2. To the extent practicable, teach the same subject or grade level, as applicable; and
3. Meet the qualifications prescribed by commissioner's rules.

Education Code 21.458(a)

Commissioner's Rules

The commissioner's rules for receiving funds under the mentor program allotment specify the requirements for districts to implement a mentor training program, including:

1. Program requirements related to mentor selection, mentor assignment, training, roles and responsibilities, and meetings;
2. An application approval process;
3. Ongoing verification of compliance with program requirements;
4. Allowable expenditures; and
5. Program review through periodic reports.

19 TAC 153.1011

Assignment of Mentor

To be assigned as a mentor, a teacher must agree to serve as a mentor teacher for at least one school year. The assignment must begin not later than the 30th day of employment of the classroom teacher to whom the mentor teacher is assigned. A district must agree to assign a mentor to a new classroom teacher for at least two school years.

A school district shall assign a mentor teacher to a classroom teacher who has been issued a temporary certificate to teach ca-

reer and technology education under Education Code 21.0444 for at least two school years.

Education Code 21.458(a-1), (a-2)

Requirements for Mentor

The commissioner's rules must require that a mentor teacher:

1. Complete a research-based mentor and induction training program approved by the commissioner;
2. Complete a mentor training program provided by the district, which the district may allow to be satisfied by completing the commissioner's research-based mentor and induction training program above;
3. Have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance; and
4. Demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

Education Code 21.458(b)

Training

A district must provide the training program described above to mentor teachers and any appropriate district and campus employees who work with the classroom teacher or supervise the classroom teacher. A district may allow the commissioner's research-based mentor and induction training program to qualify for the district's required training. The training must be completed by the mentor teacher and the district and campus employees before the beginning of the school year. A district shall also provide supplemental training to mentor teachers and employees during the school year. The training must include content related to best mentorship practices. *Education Code 21.458(b-1)*

Mentoring Sessions

A mentor teacher must meet with each classroom teacher assigned to the mentor not less than 12 hours each semester. Observations of the mentor by the classroom teacher being mentored or of the classroom teacher being mentored by the mentor may count toward the 12 hours of meeting time required for the semester.

Unless the district has created a mentoring curriculum as provided below, the mentoring sessions must address the following topics:

1. Orientation to the context, policies, and practices of the school district;
2. Data-driven instructional practices;

3. Specific instructional coaching cycles, including coaching regarding conferences between parents and the classroom teacher;

4. Professional development; and

5. Professional expectations.

Subject to approval by TEA, in determining the topics to be addressed in the mentoring sessions, a school district may create an appropriate curriculum that meets the district needs.

A district must:

1. Designate a specific time during the regularly contracted school day for meetings between mentor teachers and classroom teachers assigned to a mentor; and

2. Schedule release time or a reduced teaching load for mentor teachers and classroom teachers under this section to facilitate mentoring activities, including classroom observations or participation in supportive coaching.

Education Code 21.458(f), (f-1)

Allotment

Repealed as of September 1, 2026, a school district that has implemented a mentoring program is entitled to an allotment to fund the mentoring program and provide stipends for mentor teachers under a formula adopted by the commissioner.

Funding may be used only for providing:

1. Mentor teacher stipends;

2. Scheduled release time for mentor teachers and the classroom teachers to whom they are assigned for meeting and engaging in mentoring activities; and

3. Mentoring support through providers of mentor training.

Education Code 48.114

Achievement Academy Stipends

Literacy Achievement Academy

A classroom teacher who provides instruction to students in kindergarten through third grade and completes a literacy achievement academy is entitled to receive a stipend from the school district in the amount determined by the commissioner. A district may provide a stipend to a classroom teacher who provides instruction to students in a grade level above third grade. A stipend received under this subsection is not considered in determining whether a school district is paying the classroom teacher the minimum monthly salary under Education Code 21.402.

A school district is not required to provide a literacy achievement academy stipend to a classroom teacher if the teacher:

1. Attends the literacy achievement academy as part of an educator preparation program in which the teacher is enrolled;

2. Attends the literacy achievement academy on a day or during hours of service included in the term of the teacher's contract; or

3. Is not directed or approved by the school district at which the teacher is employed to attend the literacy achievement academy.

Education Code 21.4552(d), (d-1)

Mathematics Achievement Academy

A classroom teacher who completes a mathematics achievement academy is entitled to receive a stipend from the school district in the amount determined by the commissioner. A stipend received under this subsection is not considered in determining whether a district is paying the classroom teacher the minimum monthly salary under Education Code 21.402.

A school district is not required to provide a stipend under the mathematics achievement academy to a classroom teacher if the teacher:

1. Attends the mathematics achievement academy as part of an educator preparation program in which the teacher is enrolled;

2. Attends the mathematics achievement academy on a day or during hours of service included in the term of the teacher’s contract; or

3. Is not directed or approved by the school district at which the teacher is employed to attend the mathematics achievement academy.

Education Code 21.4553(d), (d-1)

Post Secondary Career Counseling Academy Stipend

A stipend received by a school counselor or teacher who attends a postsecondary education and career counseling academy under Education Code 33.009 is not considered in determining whether a district is paying the school counselor or teacher the minimum monthly salary under Education Code 21.402. *Education Code 33.009(h)*

Autism Training

A district may provide a salary incentive or similar compensation to a teacher who completes training provided by a regional education service center (ESC) relating to autism. A school district that de-

cides to provide an incentive or compensation shall adopt a policy to implement this section. *Education Code 21.465*

Retirement Incentives

A district may not offer or provide a financial or other incentive to an employee to encourage the employee to retire from the Teacher Retirement System of Texas. *Education Code 22.007*

Attendance Supplement

A district shall not deny an educator a salary bonus or similar compensation given in whole or in part on the basis of educator attendance because of the educator's absence from school for observance of a religious holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20. *Education Code 21.406*

Note: This policy addresses leaves in general. For provisions regarding the Family and Medical Leave Act (FMLA), including FML for an employee seeking leave because of a relative's military service, see DECA. For provisions addressing leave for an employee's military service, see DECB.

State Leave

State Personal Leave

A district shall provide employees with five days per year of state personal leave, with no limit on accumulation and no restrictions on transfer among districts. A district may provide additional personal leave beyond this minimum.

A board may adopt a policy governing an employee's use of state personal leave, except that the policy may not restrict the purposes for which the leave may be used.

Education Code 22.003(a)

State Sick Leave (Accumulated Prior to 1995)

District employees retain any sick leave accumulated as state minimum sick leave under former Section 13.904(a) of the Education Code. Accumulated state sick leave shall be used only for the following:

1. Illness of the employee.
2. Illness of a member of the employee's immediate family.
3. Family emergency.
4. Death in the employee's immediate family.
5. During military leave [see Use During Military Leave, below].

Acts of the 74th Legislative Session, Senate Bill 1, Sec. 66

Former Education Service Center Employees

A district shall accept the sick leave accrued by an employee who was formerly employed by a regional education service center (ESC), not to exceed five days per year for each year of employment. *Education Code 8.007*

Order of Use

A board's policy governing an employee's use of state personal leave may not restrict the order in which an employee may use state personal leave and any additional personal leave provided by the school district.

An employee who retains any state sick leave is entitled to use the state sick leave, state personal leave, or local personal leave in any order to the extent that the leave the employee uses is appropriate to the purpose of the leave.

Education Code 22.003(a), (f)

Option for Nonconcurrent Use of Family Medical Leave

The board shall adopt a policy that provides a classroom teacher employed by the district the option to elect not to take the teacher's paid personal leave concurrently with unpaid leave the teacher is entitled to take under the Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.) for an absence due to pregnancy or the birth or adoption of a child. *Education Code 21.418*

Use During Military Leave

An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. "Personal leave" includes personal or sick leave available under former law or provided by local policy. *Education Code 22.003(d), (e)* [See DECB]

Temporary Disability

Each full-time educator shall be given a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties. The contract or employment of the educator may not be terminated while the educator is on a leave of absence for temporary disability. For purposes of temporary disability leave, pregnancy is considered a temporary disability.

At Employee's Request

A request for a leave of absence for temporary disability must be made to a superintendent. The request must:

1. Be accompanied by a physician's statement confirming inability to work;
2. State the date requested by the educator for the leave to begin; and
3. State the probable date of return as certified by the physician.

By Board Authority

A board may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the board's judgment in consultation with a physician who has performed a thorough medical examination of the educator, the educator's condition interferes with the performance of regular duties. The educator shall have the right to present to the board testimony or other information relevant to the educator's fitness to continue in the performance of regular duties. [See DBB]

Return to Active Duty

Notice

The educator shall notify the superintendent of a desire to return to active duty no later than the 30th day before the expected date of return. The notice must be accompanied by a physician's statement indicating the educator's physical fitness for the resumption of regular duties.

Placement

An educator returning to active duty after a leave of absence for temporary disability is entitled to an assignment at the school where the educator formerly taught, subject to the availability of an

appropriate teaching position. In any event, the educator shall be placed on active duty no later than the beginning of the next school year. A principal at another campus voluntarily may approve the appointment of an employee who wishes to return from leave of absence. However, if no other principal approves the assignment by the beginning of the next school year, a district must place the employee at the school at which the employee formerly taught or was assigned.

Length of Absence

A superintendent shall grant the length of leave of absence for temporary disability as required by the individual educator. A board may establish a maximum length for a leave of absence for temporary disability, but the maximum length may not be less than 180 calendar days.

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

Sick Leave Different from Temporary Disability Leave

An employee's entitlement to sick leave is unaffected by any concurrent eligibility for a leave of absence for temporary disability. The two types of leave are different, and each must be granted by its own terms. *Atty. Gen. Op. H-352 (1974)*

Assault Leave

In addition to all other days of leave, a district employee who is physically assaulted during the performance of regular duties is entitled to the number of days of leave necessary to recuperate from physical injuries sustained as a result of the assault. The leave shall be paid as set forth below at Coordination with Workers' Compensation Benefits.

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

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

Notice of Rights

Any informational handbook a district provides to employees in an electronic or paper form or makes available by posting on the district's website must include notification of an employee's rights regarding assault leave, in the relevant section of the handbook. Any form used by a district through which an employee may request personal leave must include assault leave as an option.

Assignment to Assault Leave

At the request of an employee, a district must immediately assign the employee to assault leave. Days of assault leave may not be deducted from accrued personal leave. Assault leave may not extend more than two years beyond the date of the assault. Following

an investigation of the claim, a district may change the assault leave status and charge the leave against the employee's accrued personal leave or against the employee's pay if insufficient accrued personal leave is available.

Coordination with Workers' Compensation Benefits

Notwithstanding any other law, assault leave benefits due to an employee shall be coordinated with temporary income benefits due from workers' compensation so the employee's total compensation from temporary income benefits and assault leave benefits will equal 100 percent of the employee's weekly rate of pay.

Education Code 22.003(b)-(c-1)

Religious Observances

A district shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of district business. Such absence shall be without pay unless applicable paid leave is available. *42 U.S.C. 2000e(j), 2000e-2(a); Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, (1986); Pinsker v. Joint Dist. No. 28J of Adams and Arapahoe Counties, 735 F.2d 388 (10th Cir. 1984)*

Compliance with a Subpoena

An employer may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. *Labor Code 52.051(a)*

Note: A Texas federal court held that by omitting any reference to governmental entities from Labor Code 52.051, the state legislature intended to exclude governmental entities from the definition of "employer" contained within that section. Therefore, the statute did not waive a county's governmental immunity from liability for claims of retaliatory discharge of an employee for complying with a subpoena. *Alcala v. Texas Webb County*, 620 F. Supp. 2d 795 (S.D. Tex. 2009)

Jury Duty

An employee's accumulated personal leave may not be reduced because of the employee's service in compliance with a summons to appear as a juror [see DG]. *Education Code 22.006(c)*

Attendance at Truancy Hearing

A district may not terminate the employment of a permanent employee because the employee is required under Family Code 65.062(b) to attend a truancy court hearing. *Family Code 65.063*

Developmental Leaves of Absence

A board may grant a developmental leave of absence for study, research, travel, or other suitable purpose to an employee working in

a position requiring a permanent teaching certificate who has served in a district at least five consecutive school years.

A developmental leave of absence may be granted for one school year at one-half salary or for one-half of a school year at full salary paid to the employee in the same manner, on the same schedule, and with the same deductions as if the employee were on full-time duty.

An employee on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be an employee of a district for purposes of participating in programs, holding memberships, and receiving benefits afforded by employment in a district.

Education Code 21.452

Leave for Sick Foster Child

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

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

Labor Code 21.0595

Leave for Peace Officers

Quarantine Leave

A board shall develop and implement a paid quarantine leave policy for peace officers who are employed by the district and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

A paid quarantine leave policy must:

1. Provide that a peace officer on paid quarantine leave receive:
    a. All employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits for the duration of the leave; and
    b. Reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation; and

2. Require that the leave be ordered by the person's supervisor or the district's health authority.

A district may not reduce a peace officer's sick leave balance, vacation leave balance, holiday leave balance, or other paid leave balance in connection with paid quarantine leave taken in accordance with the district's policy.

Local Gov't Code 180.009

Mental Health Leave

A district shall develop and adopt a policy allowing the use of mental health leave by peace officers and full-time telecommunicators authorized under Occupations Code 1701.405 employed by the district who experience a traumatic event in the scope of that employment.

The mental health leave policy must:

1. Provide clear and objective guidelines establishing the circumstances under which a peace officer or telecommunicator is granted and may use mental health leave;

2. Entitle a peace officer or telecommunicator to mental health leave without a deduction in salary or other compensation;

3. Enumerate the number of mental health leave days available to a peace officer or telecommunicator; and

4. Detail the level of anonymity for a peace officer or telecommunicator who takes mental health leave.

A mental health leave policy may provide a list of mental health services available to peace officers and telecommunicators in the area of the district.

Gov't Code 614.015

Line of Duty Illness or Injury Leave

"Emergency medical services personnel" means a person described by Health and Safety Code 773.003, who is a paid employee of a district.

"Police officer" means a paid employee who is full-time, holds an officer license issued under Occupations Code Chapter 1701, and regularly serves in a professional law enforcement capacity in the police department of a district. The term includes the chief of the department.

Local Gov't Code 177A.001

A district shall provide to a police officer or emergency medical services personnel a leave of absence for an illness or injury related to the person's line of duty. The leave is with full pay for a period

commensurate with the nature of the line of duty illness or injury. If necessary, the district shall continue the leave for at least one year.

At the end of the leave of absence, the board may extend the leave of absence at full or reduced pay.

If the police officer or emergency medical services personnel is temporarily disabled by a line of duty injury or illness and the leave of absence and any extension granted by the board has expired, the person may use accumulated sick leave, vacation time, and other accrued benefits before the person is placed on temporary leave.

If the leave of absence and any extension granted by the board has expired, a police officer or emergency medical services personnel who requires additional leave shall be placed on temporary leave.

Local Gov't Code 177A.003

If able, a police officer or emergency medical services personnel may return to light duty while recovering from a temporary disability. If medically necessary, the light duty assignment may continue for at least one year.

After recovery from a temporary disability, a police officer or emergency medical services personnel shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another police officer or emergency medical services personnel may voluntarily do the work of the injured person until the person returns to duty.

Local Gov't Code 177A.004

Absence Control

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, a district that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced. *Howell v. Standard Motor Prods., Inc., No. 4:99-CV-987-E, 2001 WL 196969 (N.D. Tex. Feb. 26, 2001) (Family and Medical Leave Act case); Specialty Retailers v. DeMoranville, 933 S.W.2d 490 (Tex. 1996) (age discrimination case); Cont'l Coffee Prods. Co. v. Cazarez, 937 S.W.2d 444 (Tex. 1996) (workers' compensation claim); Gonzalez v. El Paso Nat. Gas Co., No. EP-81-CA-323, 1986 WL 4796 (W.D. Tex. Mar. 5, 1986) (sex discrimination case)*

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

Daily Rate of Pay The employment policy must provide how to compute the daily rate of pay for purposes of determining the amount of a reduction in the salary of a classroom teacher, full-time counselor, or full-time librarian for unpaid leave. *Education Code 11.1513(l)* [See DC]

Leave Administration

The Superintendent shall develop administrative regulations addressing employee leaves and absences to implement the provisions of this policy.

Definitions

The term “immediate family” is defined as:

Immediate Family

1. Spouse.
2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands *in loco parentis*.
3. Parent, stepparent, parent-in-law, or other individual who stands *in loco parentis* to the employee.
4. Sibling, stepsibling, and sibling-in-law.
5. Grandparent and grandchild.
6. Any person residing in the employee’s household at the time of illness or death.

For purposes of the Family and Medical Leave Act (FMLA), the definitions of spouse, parent, son or daughter, and next of kin are found in DECA(LEGAL).

Family Emergency

The term “family emergency” shall be limited to disasters and life-threatening situations involving the employee or a member of the employee’s immediate family.

Leave Day

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

School Year

A “school year” for purposes of earning, using, or recording leave shall mean the term of the employee’s annual employment as set by the District for the employee’s usual assignment, whether full-time or part-time.

Daily Rate of Pay

The “daily rate” of a contract employee, including a teacher, school counselor, or librarian, shall be computed by dividing the employee’s annual salary by the number of duty days in the employee’s contract year.

Catastrophic Illness or Injury

A catastrophic illness or injury is a severe condition or combination of conditions affecting the mental or physical health of the employee or a member of the employee’s immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the District. Such conditions typically require prolonged hospitalization or recovery or are expected to result in disability or death. Conditions

relating to pregnancy or childbirth shall be considered catastrophic if they meet the requirements of this paragraph.

Note: For District contribution to employee insurance during leave, see CRD(LOCAL).

Availability

The District shall make state personal leave and local leave for the current year available for use at the beginning of the school year.

State Leave Proration

If an employee separates from employment with the District before his or her last duty day of the school year or begins employment after the first duty day of the school year, state personal leave shall be prorated based on the actual time employed.

If an employee separates from employment before the last duty day of the school year, the employee's final paycheck shall be reduced for state personal leave the employee used beyond his or her pro rata entitlement for the school year.

Medical Certification

An employee shall submit medical certification of the need for leave if:

1. The employee is absent more than three consecutive workdays because of personal illness or illness in the immediate family;
2. The District requires medical certification due to a questionable pattern of absences or when deemed necessary by the supervisor or Superintendent; or
3. The employee requests FMLA leave for the employee's serious health condition; a serious health condition of the employee's spouse, parent, or child; or for military caregiver leave.

In each case, medical certification shall be made by a health-care provider as defined by the FMLA. [See DECA(LEGAL)]

State Personal Leave

The Board requires employees to differentiate the manner in which state personal leave is used.

Nondiscretionary Use

Nondiscretionary use of leave shall be for the same reasons and in the same manner as state sick leave accumulated before May 30, 1995. [See DEC(LEGAL)]

Nondiscretionary use includes leave related to the birth or placement of a child and taken within the first year after the child's birth, adoption, or foster placement.

Discretionary Use

Discretionary use of leave is at the individual employee's discretion, subject to limitations set out below.

Request for Leave

In deciding whether to approve or deny a request for discretionary use of state personal leave, the supervisor shall not seek or consider the reasons for which an employee requests to use leave. The supervisor shall, however, consider the duration of the requested absence in conjunction with the effect of the employee's absence on the educational program and District operations, as well as the availability of substitutes.

Discretionary use of state personal leave shall not exceed five consecutive workdays.

Local Leave

Each full-time employee shall earn paid local leave days each school year based on the work calendar for each employee's positions and in accordance with administrative regulations.

Local leave shall accumulate without limit.

Local leave shall be used according to the terms and conditions of state sick leave accumulated before the 1995–96 school year. [See DEC(LEGAL)]

Sick Leave Pool

An employee who has exhausted all paid leave as well as any applicable compensatory time and who suffers from a catastrophic illness or injury may request the establishment of a sick leave pool, to which District employees may donate state personal leave for use by the eligible employee.

The pool shall cease to exist when the employee no longer needs leave for the purpose requested, uses the maximum number of days allowed under a pool, or exhausts all leave days donated to the sick leave pool.

The Superintendent shall develop regulations for the implementation of the sick leave pool that address the following:

1. Procedures to request the establishment of a sick leave pool;
2. The maximum number of days an employee may donate to a sick leave pool;
3. The maximum number of days per school year an eligible employee may receive from a sick leave pool; and
4. The return of unused days to donors.

Appeal

An employee may appeal a decision regarding the establishment or implementation of the District's sick leave pool in accordance with DGBA(LOCAL), beginning with the Superintendent or appropriate administrator.

Family and Medical Leave

The District shall make FMLA leave available to employees in accordance with DECA(LEGAL) and the following provisions.

Concurrent Use of Paid Leave

FMLA leave shall run concurrently with applicable paid leave and compensatory time, as applicable, except as provided below.

Exception

A teacher shall notify the appropriate administrator if they choose not to use paid leave concurrently with FMLA leave for an absence related to pregnancy or the birth or adoption of child.

Twelve-Month Period

For purposes of an employee's entitlement to FMLA leave, the 12-month period shall be measured forward from the date an individual employee's first FMLA leave begins.

Combined Leave for Spouses

When both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. The District shall limit military caregiver leave to a combined total of 26 weeks.

Intermittent or Reduced Schedule Leave

The District shall not permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee.

Certification of Leave

When an employee requests leave, the employee shall provide certification, in accordance with FMLA regulations, of the need for leave.

Fitness-for-Duty Certification

In accordance with administrative regulations, when an employee takes FMLA leave due to the employee's own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification.

Leave at the End of Semester

When a teacher takes leave near the end of the semester, the District may require the teacher to continue leave until the end of the semester.

Temporary Disability Leave

Any full-time employee whose position requires educator certification by the State Board for Educator Certification or by the District shall be eligible for temporary disability leave. The maximum length of temporary disability leave shall be 180 calendar days. [See DBB(LOCAL) for temporary disability leave placement and DEC(LEGAL) for return to active duty.]

An employee's notification of need for extended absence due to the employee's own medical condition shall be forwarded to the Superintendent as a request for temporary disability leave.

The District shall require the employee to use temporary disability leave and paid leave, including any compensatory time, concurrently with FMLA leave.

Workers' Compensation

Note: Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation of the District's contribution to health insurance.

An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

No Paid Leave Offset

The District shall not permit the option for paid leave offset in conjunction with workers' compensation income benefits. [See CRE]

Court Appearances

Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the District and shall not be deducted from the employee's pay or leave balance.

Absences for court appearances related to an employee's personal business shall be taken as personal leave or as leave without pay if no applicable leave is available.

Neutral Absence Control

If an employee does not return to work after exhausting all available paid and unpaid leave, the District shall provide the employee written notice that he or she no longer has leave available for use. The District shall automatically pursue termination of an employee who has exhausted all available leave, regardless of the reason for the absence [see DF series]. The employee's eligibility for reasonable accommodations, as required by the Americans with Disabilities Act [see DAA(LEGAL)], shall be considered before termination. If terminated, the employee may apply for reemployment with the District.

Note: For a detailed treatment of termination and nonrenewal of educator contracts, see policies DFAA and DFAB (Probationary Contracts), and DFBA and DFBB (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:

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-

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

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

Education Code 21.0031(f)

District's Options

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

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

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

Education Code 21.0031(b)

Exception

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

1. The employee requests an extension from SBEC to renew, extend, or otherwise validate the employee's certificate or permit; and
2. Not later than the 10th day after the date the contract is void, the employee takes necessary measures to renew, extend, or otherwise validate the employee's certificate or permit, as determined by SBEC.

Education Code 21.0031(b-1)

No Appeal or Chapter 21 Hearing

A school district's decision under Education Code 21.0031(b) is not subject to appeal under Education Code Chapter 21, and the notice and hearing requirements of that chapter do not apply to the decision. *Education Code 21.0031*

Applicability

These void contract provisions do not affect the rights and remedies of a party in an at-will employment relationship and do not apply to a certified teacher assigned to teach a subject for which the teacher is not certified. *Education Code 21.0031; Nunez v. Simms, 341 F.3d 385 (5th Cir. 2003)*

Report to SBEC

A superintendent shall report the educator's termination to SBEC if the conditions set forth at Education Code 22A.051 exist. [See DHB]

Report to Superintendent

A principal shall report the educator's termination to the superintendent if the conditions set forth at Education Code 22A.051 exist. [See DP]

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 EMD] *Education Code 28.0022(h)*

Suspension Without Pay

A board may, for good cause as determined by the board, suspend an employee without pay:

1. Pending discharge, or
2. In lieu of termination.

The suspension may not extend beyond the end of the school year.

Education Code 21.211(b)

Back Pay

If an employee is not discharged after being suspended without pay pending discharge, the employee is entitled to back pay for the period of suspension. *Education Code 21.211(c)*

Grounds for Dismissal

A board may terminate a term contract and discharge a term contract employee at any time for:

1. Good cause as determined by the board; or
2. A financial exigency that requires a reduction in personnel.

Education Code 21.211(a)

Notice

Before any term contract employee is dismissed for good cause, the employee shall be given reasonable notice in writing of the charges against him or her and an explanation of a district's evidence, set out in sufficient detail to fairly enable the employee to show any error that may exist. *Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985)*

Hearing

If a term contract employee desires a hearing before an independent hearing examiner, the employee must file a written request with the commissioner of education not later than the 15th day after the date the employee receives notice of the proposed termination or suspension without pay. The employee must provide a district with a copy of the request and must provide the commissioner with a copy of the notice.

The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing.

Education Code 21.251(a), .253 [See DFD]

Financial Exigency

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the board in writing not later than the 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 con-

tract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F, as determined by the board. *Education Code 21.159*

Report by Principal

The principal of a district, including a district of innovation, must notify the superintendent not later than the seventh business day after the date of an educator's termination of employment following an alleged incident of misconduct described by Education Code 22A.051(a) or the principal knew about an educator's misconduct under Education Code 22A.051(a)(1), or not later than 48 hours after the principal becomes aware of evidence of misconduct described by Education Code 22A.051(a)(2)(A), (B), (C), or (D)(b)(1). *Education Code 22A.051(c); 19 TAC 249.14(e)* [See DP]

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.

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 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 Procedures

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.

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.

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.

Applicability

This hearing process applies only if an employee requests a hearing after receiving notice of a proposed decision to:

1. Terminate a continuing contract at any time, except as provided below;
2. Terminate a probationary or term contract before the end of the contract period, except as provided below; or
3. Suspend without pay.

Exception

This hearing process does not apply to a decision to:

1. Terminate a probationary contract at the end of the contract term;
2. Not renew a term contract, unless the board has adopted this process for nonrenewals; or
3. Terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the board has decided to use this hearing process.

Education Code 21.251

Request for Hearing

Not later than the 15th day after the date the employee receives notice of one of the proposed contract actions listed above, the employee must file a written request with the commissioner for a hearing before a hearing examiner. The employee must provide the district with a copy of the request and must provide the commissioner with a copy of the notice. The parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing. *Education Code 21.253*

Assignment of Hearing Examiner by Agreement

The parties may agree to select a hearing examiner from the list maintained by the commissioner or a person who is not certified to serve as a hearing examiner, provided that person is licensed to practice law in Texas. If the parties agree on a hearing examiner the parties shall, before the date the commissioner is permitted to assign a hearing examiner, notify the commissioner in writing of the agreement, including the name of the hearing examiner selected.

By Appointment

If the parties do not select a hearing examiner by agreement, the commissioner shall assign the hearing examiner not earlier than the sixth business day and not later than the 10th business day after the date on which the commissioner receives the request for a hearing. When a hearing examiner has been assigned, the commissioner shall notify the parties immediately.

Rejection — The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject an assigned hearing examiner for cause. A rejection must be in writing and filed with the commissioner not later than the third day after the date of notification of the hearing examiner's assignment. If the parties agree to reject the hearing examiner or if the commissioner determines that one party has good cause for the rejection, the commissioner shall assign another hearing examiner.

Finality of Decision — After the employee receives notice of the proposed contract action, the parties may agree in writing that the hearing examiner's decision be final and nonappealable on all or some issues.

Education Code 21.254

Powers of Hearing Examiner — The hearing examiner may issue subpoenas, administer oaths, rule on motions and the admissibility of evidence, maintain decorum, schedule and recess the proceedings, allow the parties to take depositions or use other means of discovery, and make any other orders as provided by commissioner rule.

Conduct of Hearing — The hearing and any depositions must be held within the geographical boundaries of the district or at the regional education service center that serves the district.

Education Code 21.255

Schedule Restriction — A hearing before a hearing examiner may not be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree. *Education Code 21.257(c)*

Private — A hearing before a hearing examiner shall be private unless the employee makes a written request for a public hearing.

Exception — If necessary to maintain decorum, the hearing examiner may close a hearing that an employee has requested be public.

Protection of Witnesses — To protect the privacy of a witness who is a child, the hearing examiner may close the hearing to receive the testimony or order that the testimony be presented by procedures in Article 38.071, Code of Criminal Procedure.

Employee Rights — At the hearing, the employee has the right to:

1. Be represented by a representative of the employee's choice;
2. Hear the evidence on which the charges are based;
3. Cross-examine each adverse witness; and
4. Present evidence.

The hearing is not subject to the Administrative Procedure Act.

The hearing shall be conducted in the same manner as a trial without a jury in state district court. A certified shorthand reporter shall record the hearing.

Evidence — The Texas Rules of Civil Evidence shall apply at the hearing. An evaluation or appraisal of the teacher is presumed to be admissible at the hearing. The hearing examiner's findings of fact and conclusions of law shall be presumed to be based only on admissible evidence.

Burden of Proof — The district has the burden of proof by a preponderance of the evidence at the hearing.

Education Code 21.256

Costs — The district shall bear the cost of the services of the hearing examiner and certified shorthand reporter and the production of any original hearing transcript. Each party shall bear its costs of discovery, if any, and its attorney's fees. *Education Code 21.255(e)*

Recommendation — Not later than the 60th day after the date on which the commissioner receives a request for a hearing before a hearing examiner, the hearing examiner shall complete the hearing and make a written recommendation. The recommendation must include findings of fact and conclusions of law. The recommendation may include a proposal for granting relief, including reinstatement, back pay, or employment benefits. The proposal for relief may not include attorney's fees or other costs associated with the hearing or appeals from the hearing. The hearing examiner shall send a copy of the recommendation to each party, the board president, and the commissioner.

Waiver of Deadline — The parties may agree in writing to extend by not more than 45 days the right to a recommendation by the date specified above.

Education Code 21.257

Consideration — The board or a designated subcommittee shall consider the hearing examiner's record and recommendation at the first board meeting for which notice can be posted in compliance with the open meetings laws. The meeting must be held not later than the 20th day after the date that the board president receives the hearing examiner's recommendation and record.

Oral Argument and Recording — At the meeting, the board or subcommittee shall allow each party to present an oral argument to the board or subcommittee. The board may, by written policy, limit the amount of time for oral argu-

ment, provided equal time is allotted each party. A certified shorthand reporter shall record any such oral argument.

Legal Advice

The board or subcommittee may obtain advice from an attorney who has not been involved in the proceedings.

Education Code 21.258, .260

Dismissal

The hearing examiner may dismiss a hearing before completing the hearing or making a written recommendation if:

1. The teacher requests the dismissal;
2. The school district withdraws the proposed decision that is the basis of the hearing; or
3. The teacher and school district request the dismissal after reaching a settlement regarding the proposed decision that is the basis of the hearing.

Education Code 21.257(f)

Decision

Not later than the 10th day after the date on which the meeting to consider the hearing examiner's recommendation is held, the board or subcommittee shall announce its decision, which must include findings of fact and conclusions of law, and may include a grant of relief.

The board or subcommittee may adopt, reject, or change the hearing examiner's conclusions of law or proposal for granting relief. A determination by the hearing examiner regarding good cause for the suspension of an employee without pay or the termination of a probationary, continuing, or term contract is a conclusion of law and may be adopted, rejected, or changed by the board or board subcommittee.

The board may reject or change a finding of fact made by the hearing examiner:

1. Only after reviewing the record of the proceedings; and
2. Only if the finding of fact is not supported by substantial evidence.

The board or subcommittee shall state in writing the reason for and legal basis for a change or rejection.

Education Code 21.257, .259

Recording

A certified shorthand reporter shall record the announcement of the decision. The district shall bear the cost of the reporter's services.
Education Code 21.260

Record of Proceedings

The commissioner shall consider the appeal solely on the basis of the local record and may not consider any additional evidence or issue. *Education Code 21.301(c)*

The record of the proceedings before the independent hearing examiner shall include:

1. The transcripts of proceedings at the local level;
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the recommendation of the independent hearing examiner;
7. The transcript of the oral argument before the board or board subcommittee;
8. The decision of the board or board subcommittee; and
9. If applicable, the board or board subcommittee's written reasons for changing the recommendation of the independent hearing examiner.

19 TAC 157.1072(e)

Resignation without Consent (Unilateral Resignation)

An educator employed under a probationary contract for the following school year, or under a term or continuing contract, may relinquish the position and leave district employment at the end of the school year without penalty by filing a written resignation with a board or a board's designee not later than the 45th day before the first day of instruction of the following school year.

A written resignation mailed by prepaid certified or registered mail to a board president or a board's designee at the post office address of the district is considered filed at the time of mailing.

Education Code 21.105(a), .160(a), .210(a)

An unequivocal resignation filed not later than the 45th day before the first day of instruction of the following school year is effective upon filing with a district and the district cannot reject such a resignation. The resignation cannot be withdrawn by the teacher based on an argument that the district has not accepted the resignation. *Fantroy v. Dallas Indep. Sch. Dist., Tex. Comm'r of Educ. Decision. No. 034-R8-0206 (Mar. 5, 2009); Garcia v. Miles Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 055-RI-503 (Nov. 30, 2006).*

Resignation with Consent

The educator may resign, with the consent of the board or the board's designee, at any other time. *Education Code 21.105(b), .160(b), .210(b)*

Acceptance or approval of a resignation indicates consent to abandonment of contract. *Quitman Indep. Sch. Dist. v. Wilkerson, Tex. Comm'r of Educ. Decision No. 142-TTC-698 (Dec. 2, 1999); Houston Indep. Sch. Dist. v. Johnson, Tex. Comm'r of Educ. Decision No. 054-TTC-1196 (Sept. 28, 1998)*

Contract Abandonment

Written Complaint

On written complaint by a district, the State Board for Educator Certification (SBEC) may impose sanctions against an educator who is employed under a probationary contract, or under a continuing or term contract, for the following school year, and who:

1. Resigns;
2. Fails without good cause to comply with the resignation deadline or the provision regarding resignation by consent; and
3. Fails without good cause to perform the contract.

Education Code 21.105(c), .160(c), .210(c)

Sanctions Prohibited

SBEC may not impose a sanction against a teacher who relinquishes a position under a probationary, term, or continuing contract and leaves the employment of the district after the 45th day before the first day of instruction for the upcoming school year in violation of and without the consent of the board if the teacher's fail-

ure to comply with Education Code 21.105(a), 21.160(a), or 21.210(a) was due to:

1. A serious illness or health condition of the teacher or a close family member of the teacher;
2. The teacher's relocation because the teacher's spouse or a partner who resides with the teacher changes employers or location of employment;
3. A significant change in the needs of the teacher's family in a manner that requires the teacher to:
    a. Relocate; or
    b. Forgo employment during a period of required employment under the teacher's contract; or
4. The teacher's reasonable belief that the teacher had written permission from the school district's administration to resign.

Education Code 21.105(g), .160(g), .210(g)

Board Action

SBEC shall not pursue sanctions against an educator who is alleged to have abandoned his or her contract unless a board:

1. Submits a written complaint within 30 calendar days after the effective date of the educator's separation from employment from the district. Unless the district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract.
2. Renders a finding that good cause did not exist under Education Code 21.105(c)(2) (probationary contract), 21.160(c)(2) (continuing contract), or 21.210(c)(2) (term contract). This finding constitutes prima facie evidence of the educator's lack of good cause but is not a conclusive determination.
3. Submits the following required attachments to the written complaint:
    a. The educator's resignation letter, if any;
    b. The agreement with the educator regarding the effective date of separation from employment, if any;
    c. The educator's contract; and
    d. Board meeting minutes indicating a finding of "no good cause." If the board does not meet within 30 calendar

days of the educator's separation from employment, the minutes may be submitted within ten calendar days after the next board meeting.

19 TAC 249.14(j)

Notice to Teacher

If a district submits a complaint regarding a teacher to SBEC, the district shall promptly notify the teacher of the complaint. The notice must include:

1. The basis of the complaint;
2. Information regarding how the teacher may contact SBEC; and
3. A reminder that the teacher should verify that the teacher's mailing address on file with SBEC is current.

SBEC Review

Before imposing sanctions against a teacher for abandonment of contract, SBEC:

1. Must consider any mitigating factors relevant to the teacher's conduct; and
2. May consider alternatives to sanctions, including additional continuing education or training.

If a teacher files a written resignation after the 45th day but not later than the 30th day before the first day of instruction of the following school year, SBEC may not suspend or revoke the teacher's certificate.

Education Code 21.105(d)-(f), .160(d)-(f), .210(d)-(f)

Mitigating Factors

SBEC shall consider the following factors in seeking, proposing, or making a decision regarding an educator who has abandoned a contract in violation of Education Code 21.105(c), 21.160(c), or 21.210(c). A reduction of one month in suspension time will be given for each factor established, except for the factors 7-10 below. The educator:

1. Gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
2. Assisted the school district in finding a replacement educator to fill the position;
3. Continued to work until the school district hired a replacement educator;
4. Assisted in training the replacement educator;

5. Showed good faith in communications and negotiations with the school district;
6. Provided lesson plans for classes following educator's resignation;
7. Changed careers within the field of education:
    a. To a position that required a different class of educator certification as defined in 19 Administrative Code 230.33(b) (relating to Classes of Certificates);
    b. To a position with a higher level of authority within the principal class of certificate; or
    c. To a position in an open-enrollment charter school or a district of innovation that is equivalent to the positions described above;
8. Had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;
9. Resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator; or
10. Any other relevant circumstances or facts.

19 TAC 249.17(d)(2)

Required Report to SBEC

A superintendent shall report the educator's resignation to SBEC if the conditions set forth at Education Code 22A.051 exist. [See DHB] *Education Code 22A.051*

Investigation

A superintendent of a district, including a district of innovation, shall complete an investigation of an educator that involves evidence that the educator may have abused or otherwise committed an unlawful act, was involved in a romantic relationship with, or solicited or engaged in sexual contact with a student or minor, despite the educator's resignation from employment before completion of the investigation. *Education Code 22A.051(b); 19 TAC 249.14(d)(3)(C)*

Report by Principal

A person who serves as a principal in a district, including a district of innovation, must notify the superintendent, and may be subject to sanctions for failure to do so as described by Education Code 22A.051(c) [see DP]. *Education Code 22A.051(c)*

Employee Free Speech

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

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

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

Whistleblower Protection

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

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

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

Gov't Code 554.002

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

Definitions

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

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

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

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

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

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

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

1. The employee believed the governmental entity was authorized to:

   a. Regulate under or enforce the law alleged to be violated in the report, or

   b. Investigate or prosecute a violation of criminal law; and

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

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

Whistleblower Complaints

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

Initiate Grievance

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

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

Legal Action

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

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

2. Terminate district grievance procedures and sue within the timelines established by Government Code 554.005 and 554.006.

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

Burden of Proof	If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.
Affirmative Defense	It is an affirmative defense to a whistleblower suit that the district would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under the whistleblower law. *Gov't Code 554.004*
Notice of Rights	A board shall inform its employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. *Gov't Code 554.009*

Right to Report a Crime

A district employee may report a crime witnessed at the school to any peace officer with authority to investigate the crime. A district may not adopt a policy requiring a school employee to refrain from reporting a crime witnessed at the school or to report a crime witnessed at the school only to certain persons or peace officers. *Education Code 37.148*

Protection for Reporting Child Abuse

A district may not suspend or terminate the employment of, discriminate against, or take other adverse employment action against a professional employee who in good faith:

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

"Adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect under Family Code 261.101.

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

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

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

Protection from Disciplinary Proceedings

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

Reporting Child Abuse or Maltreatment

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

Use of Physical Force

A professional employee may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Penal Code 9.62. This provision does not prohibit a district from enforcing a policy relating to corporal punishment or bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment. *Education Code 22.0512(a); Tex. Atty. Gen. Op. GA-0202 (2004)*

Penal Code 9.62 provides that the use of force, other than deadly force, against a person is justified:

1. If the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
2. When and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

Penal Code 9.62

Failure to Follow Scope, Sequence, and Instructional Materials

A district may not penalize a teacher who does not follow the pacing of recommended or designated instructional materials or the pacing of the recommended or designated scope and sequence for a subject in the required curriculum under Education Code 28.002(a) in a particular grade level based on the teacher's determination that the teacher's students need more or less time in a specific area to demonstrate proficiency in the essential knowledge and skills for that subject and grade level [see EHAA].

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

Education Code 28.0027(b), (c)

A classroom teacher employed by a district may not be subject to disciplinary proceedings for an allegation that the teacher violated Education Code 28.0022, the Establishment Clause of the First Amendment of the United States Constitution, or a related state or federal law if:

1. The teacher used only instructional material included on the list of approved instructional material maintained by the State Board of Education under Education Code 31.022 and adopted by the district; and

2. The allegation does not dispute that the teacher delivered instruction from the instructional material with fidelity.

This immunity is in addition to, and may not be construed to interfere with, any other immunity provided by law.

Education Code 22.05125

Instructional Materials and Technological Equipment

A board may not require an employee who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. An employee may not waive this provision by contract or any other means.

Exception

A district may enter into a written agreement with an employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the employee to use the electronic instructional material or technological equipment for personal business.

The written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to enter into such an agreement as a condition of employment.

Education Code 31.104(e); 19 TAC 66.107(c)

Controversial Topics

For any course or subject, including an innovative course, for a grade level from kindergarten through grade 12, a teacher may not be compelled to discuss a widely debated and currently controver-

sial issue of public policy or social affairs. *Education Code 28.0022(a)*

Note: For instructional requirements and prohibitions, including requirements for student discussion, see EMB.

Jury Duty

A district may not discharge, threaten to discharge, intimidate, or coerce any permanent employee because the employee serves as a juror or grand juror, or for the employee's attendance or scheduled attendance in connection with the service, in any court in the United States. An employee who is discharged, threatened with discharge, intimidated, or coerced is entitled to return to the same employment that the employee held when summoned for jury or grand jury service if the employee, as soon as practical after release from jury or grand jury service, gives the employer actual notice that the employee intends to return. *Civ. Prac. & Rem. Code 122.001*

A district may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against a school district employee because of the employee's compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, a school district shall pay the employee the employee's normal daily compensation [see DEC]. *Education Code 22.006(a), (b)*

Voting

A person commits an offense if, with respect to another person over whom the person has authority in the scope of employment, the person knowingly refuses to permit the other person to be absent from work on election day or while early voting is in process for the purpose of attending the polls to vote, or subjects or threatens to subject the other person to a penalty for attending the polls on election day or while early voting is in progress to vote. Penalty means a loss of wages or another benefit of employment.

It is an exception to the application of this provision that the person's conduct occurs in connection with an election in which the polls are open on election day or while early voting is in progress for voting for two consecutive hours outside of the voter's working hours.

Election Code 276.004

Breaks for Nursing Mothers

A district shall provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth each time the employee has need to express the milk.

A district shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

A district shall not be required to compensate an employee receiving reasonable break time for any time spent during the workday for such purpose unless otherwise required by federal or state law or municipal ordinance.

Break time provided shall be considered hours worked if the employee is not completely relieved from duty during the entirety of the break.

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

This requirement does not preempt a state law or municipal ordinance that provides greater protections to employees.

29 U.S.C. 218d

Right to Express Breast Milk

A district employee is entitled to express breast milk at the employee's workplace. *Gov't Code 619.002*

The district shall develop a written policy on the expression of breast milk by employees under Government Code Chapter 619. The policy must state that the district shall support the practice of expressing breast milk and make reasonable accommodations for the needs of employees who express breast milk.

A district shall provide a reasonable amount of break time for an employee to express breast milk each time the employee has need to express the milk. The district shall provide a place, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk.

A district may not suspend or terminate the employment of, or otherwise discriminate against, an employee because the employee has asserted the employee's rights under Government Code Chapter 619. Government Code Chapter 619 does not create a private or state cause of action against a district.

Gov't Code Ch. 619

Charitable Contributions

A board or a district employee may not directly or indirectly require or coerce any district employee to:

1. Make a contribution to a charitable organization or in response to a fund-raiser; or

2. Attend a meeting called for the purpose of soliciting charitable contributions.

A board or district employee may not directly or indirectly require or coerce any district employee to refrain from the same acts.

Education Code 22.011

Protection of Nurses

A district may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission relating to patient care that:

1. Would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I;

2. Constitutes a minor incident, as defined at Occupations Code 301.419; or

3. Would violate Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners, if the nurse notifies the district at the time of the refusal that this is the reason for refusing to engage in the act or omission.

Occupations Code 301.352(a)

Designated Time for Prayer

The board of trustees may adopt a policy requiring every campus of the district or school to provide students and employees with an opportunity to participate in a period of prayer and reading of the Bible or other religious text on each school day in accordance with this section. [See FNA]

Regardless of whether the board adopts a policy under Education Code 25.0823(a), this section does not prohibit a student or employee of the district or school from participating in prayer or reading the Bible or other religious text during a period of the school day that is not designated as a period of prayer and reading of the Bible or other religious text.

Education Code 25.0823(a),(g)

Right to Engage in Religious Speech or Prayer

The right of an employee of a school district or open-enrollment charter school to engage in religious speech or prayer while on duty may not be infringed on by the district or school or another state governmental entity, unless the infringement is necessary to further a compelling state interest; and narrowly tailored using the least restrictive means to achieve that compelling state interest.
Education Code 22.012

Political Participation

The board or any district employee may not directly or indirectly require or coerce any teacher to refrain from participating in political affairs in his or her community, state, or nation. *Education Code 21.407(b)*

Association Membership

The board or any district employee may not directly or indirectly require or coerce any teacher to join any group, club, committee, organization, or association. Education Code Chapter 21 does not abridge the right of an educator to join or refuse to join any professional association or organization. *Education Code 21.407(a), 21.408*

Labor Organizations

An individual may not be denied employment by the district because of the individual's membership or nonmembership in a labor organization. *Gov't Code 617.004*

"Labor organization" means any organization in which employees participate that exists, in whole or in part, to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions. *Gov't Code 617.001*

Collective Bargaining Prohibited

The board may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of district employees; nor shall it recognize a labor organization as the bargaining agent for a group of employees. *Gov't Code 617.002*

Strikes Prohibited

District employees may not strike or engage in an organized work stoppage against the district. However, the right of an individual to cease work shall not be abridged if the individual is not acting in concert with others in an organized work stoppage. *Gov't Code 617.003(a), (c)*

Penalties

Any employee who participates in a strike or organized work stoppage shall forfeit all reemployment rights and any other rights, benefits, or privileges he or she enjoys as a result of public employment or former public employment. *Gov't Code 617.003(b)*

TEA Resources for Classroom Teachers

The Texas Education Agency (TEA) will contract with a third party to provide the following services for a classroom teacher employed under a probationary, continuing, or term contract:

1. Assistance in understanding the teacher's rights, duties, and benefits; and
2. Liability insurance to protect a teacher against liability to a third party based on conduct that the teacher allegedly engaged in during the course of the teacher's duties.

A district may not interfere with a classroom teacher's access to services provided under this section.

Education Code 21.417(a)-(b) [See CFEA]

United States Constitution

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

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

Texas Constitution

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

Federal Laws

Section 504

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

Americans with Disabilities Act

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

Title IX

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

State Laws

Wages, Hours, Conditions of Work

The prohibition against collective bargaining and strikes [see DGA] does not impair the right of employees to present grievances concerning their wages, hours of employment, or conditions of work, either individually or through a representative that does not claim the right to strike. *Gov't Code 617.005*

The term "conditions of work" should be construed broadly to include any area of wages, hours or conditions of employment, and any other matter that is appropriate for communications from employees to employer concerning an aspect of their relationship.

Atty. Gen. Op. JM-177 (1984); Corpus Christi Am. Fed'n of Teachers v. Corpus Christi Indep. Sch. Dist., 572 S.W.2d 663 (Tex. 1978)

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

Representative

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

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

Employment Policy

A district's employment policy must provide each employee with the right to present grievances to the board.

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

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

Education Code 11.1513

District Grievance Policy

The board shall adopt a grievance policy to address grievances received by the district. *Education Code 26A.001(a)*

Levels of Review

The policy must provide for the following levels of review, except as provided below:

1. Review by the principal of the district campus at which the grievance is filed or the principal's designee or, for a griev-

ance that arises from subject matter unrelated to a campus, an administrator at the school district's central office;

2. If established by the policy, an appeal to an administrator at the school district's central office;

3. An appeal to the superintendent of the school district or the superintendent's designee; and

4. An appeal to the board of trustees of the school district.

A review or appeal on a grievance must be conducted by a person with the authority to address the grievance unless a preliminary hearing is necessary to develop a record or a recommendation for the board of trustees of the school district.

Education Code 26A.001(b), (c)

General Requirements

The policy must:

1. Prohibit the board or a district employee from retaliating against a student or parent of a student who files a grievance in accordance with the policy;

2. Require a person involved in reviewing a grievance under the policy to recuse himself or herself from reviewing the grievance if the person is the subject of the grievance;

3. Provide for a higher level of review if the person who would otherwise review the grievance is required to recuse himself or herself;

4. Provide for the creation and retention of a record of each hearing on the grievance, including documents submitted by the person who filed the grievance or determined relevant by school district personnel and a written record of the decision, including an explanation of the basis for the decision and an indication of each document that supports the decision;

5. Allow the person who filed the grievance to supplement the record with additional documents or add additional claims;

6. Allow for a member of the board to file a grievance with the district, but prohibit the member from voting on matters related to that grievance;

7. Allow for a remand to a lower level of review to develop a record at any time, including at the board level of review;

8. Require the district to direct a grievance that is filed with the incorrect administrator to the appropriate administrator and

consider the grievance filed on the date on which the grievance was initially filed;

9. Require the district to issue a decision on the merits of the concern raised in the grievance, notwithstanding procedural errors or the type of relief requested;

10. Unless otherwise required by law, allow for a hearing or meeting at which the grievance will be discussed to be open or closed at the request of the person who filed the grievance; and

11. For a grievance before the board, require that the person who filed the grievance be provided at least five business days before the date on which the meeting to discuss the grievance will be held a description of any information the board of trustees intends to rely on that is not contained in the record; and

12. For a grievance before the board, require the meeting at which the grievance is discussed be recorded by video or audio recording or by transcript created by a certified court reporter.

Education Code 26A.001(e)

Deadlines

Appeal

The policy must provide at least 20 days to file an appeal after the date on which a decision on the grievance was made.

Hearings

For a hearing that is not before the board of trustees of the school district, the policy must require:

1. The district to hold a hearing not later than the 10th day after the date on which the grievance or appeal was filed; and

2. A written decision to be made not later than the 20th day after the date on which the hearing was held that includes any relief or redress to be provided and information regarding filing an appeal, including the timeline to appeal under this provision and Education Code 7.057, if applicable.

For a hearing before the board, the policy must require the board to:

1. Hold a meeting to discuss the grievance not later than the 60th day after the date on which the previous decision on the grievance was made; and

2. Make a decision on the grievance not later than the 30th day after the date on which the meeting is held.

Education Code 26A.002

Employee Grievance Policy

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

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

Telephone Representation

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

Education Code 11.171(a), (c)

Audio Recording

A district's grievance policy must permit an employee who reports a grievance to make an audio recording of any meeting or proceeding at which the substance of a grievance that complies with the policy is investigated or discussed. The implementation of an employee's authorization to make an audio recording may not result in a delay of any timeline provided by the grievance policy. A district is not required to provide equipment for the employee to make the recording. *Education Code 11.171(b)*

Board Committee

The board may delegate the authority to hear and decide a grievance to a committee of at least three members composed only of members of the board. For purposes of an appeal to the commissioner under Education Code 7.057, a decision by the committee is a decision of the board of trustees. The policy requirements above apply to the committee in the same manner as those requirements apply to the board. *Education Code 29A.001(e)*

Report on Grievance

Each school district shall annually submit a report on grievances filed in the district during the preceding year. *Education Code 26A.001(g)*

Filing Procedures and Forms

The board shall develop, make publicly available in a prominent location on the district's website, and include in the district's student handbook the procedures for resolving grievances; standardized forms for filing a grievance, a notice of appeal, or a request for a hearing under this chapter; and the method by which a grievance may be filed electronically.

Electronic Filing

A district shall ensure that a grievance may be submitted electronically at the location on the district's website at which the information described above is available.

TEA Notification

A district shall submit and make accessible to the Texas Education Agency the location on the district's website at which the information described above is available.

Education Code 26A.003

Commissioner Enforcement

If a grievance is appealed to the commissioner under Education Code 7.057, the commissioner of education may:

On Appeal

1. Investigate an alleged violation of state or federal law regarding the confidentiality of student information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), relating to the grievance and collaborate with relevant federal agencies in such an investigation; and

2. Take any action necessary to compel the district, the district's board, or a district employee to comply with the state or federal law.

Education Code 26A.001(f)

Determination of Retaliation

If the commissioner determines that a school district educator has retaliated against a student or parent of or person standing in parental relation to a student in violation of the policy requirement, above, the commissioner of education may report the educator to the State Board for Educator Certification for investigation. *Education Code 26A.001(i)*

Superintendent Testimony

If the commissioner of education finds against a school district under Education Code 7.057 in at least five grievances to which that provision applies involving the district during a school year, the superintendent of the school district must appear before the State Board of Education to testify regarding the commissioner's findings and the frequency of grievances against the district. *Education Code 26A.004*

Finality of Grades

An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with a district's grading policy applicable to the grade, as determined by the board.

A board's determination is not subject to appeal.

Education Code 28.0214

Open Meetings Act

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

Closed Meeting

A board may conduct a closed meeting on an employee complaint to the extent required or provided by law. *Gov't Code 551.082* [See BEC]

Record of Proceedings

An appeal of a board's decision to the commissioner shall be decided based on a review of the record developed at the district level. "Record" includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

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

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

19 TAC 157.1073(d)

Whistleblower Complaints

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

Complaints

In this policy, the terms “complaint” and “grievance” shall have the same meaning.

Other Complaint Processes

Employee complaints shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with DGBA after the relevant complaint process has been followed:

1. Complaints alleging discrimination, including violations of Title IX (gender), Title VII (sex, race, color, religion, national origin), ADEA (age), or Section 504 (disability), shall be submitted in accordance with DIA.
2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violation of Title VII, shall be submitted in accordance with DIA.
3. Complaints concerning retaliation related to discrimination and harassment shall be submitted in accordance with DIA.
4. Complaints concerning instructional resources shall be submitted in accordance with the EF series.
5. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with the CKE series.
6. Complaints concerning the proposed nonrenewal of a term contract issued under Chapter 21 of the Education Code shall be submitted in accordance with DFBB.
7. Complaints concerning the proposed termination or suspension without pay of an employee on a probationary, term, or continuing contract issued under Chapter 21 of the Education Code during the contract term shall be submitted in accordance with DFAA, DFBA, or DFCA.

Notice to Employees

The District shall inform employees of this policy through appropriate District publications and on the District’s website.

Informal Process

The Board encourages employees to discuss their concerns with their supervisor, principal, or other appropriate campus or District administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

Filing Deadlines

If an employee has engaged in the informal process in an attempt to resolve the complaint with the District and has not reached a

resolution during the process, the employee must file a complaint within 15 business days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance.

Deadline Extensions

All deadlines shall be strictly followed unless otherwise required by law or modified by mutual written consent.

Formal Process

An employee may initiate the formal process described below by timely filing a written complaint form.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or "mini-trial" at any level.

The complaint form shall be filed with the lowest level administrator who has the authority to remedy the alleged problem. In most circumstances, the employee shall file Level One complaints with the campus principal for any complaint on a matter related to a campus. For a complaint that arises on a matter that is unrelated to a campus, the complaint shall be filed with the appropriate District-level administrator.

If the subject matter of the complaint requires a Board decision, is a complaint about a Board member, or is a complaint about the Superintendent, the complaint shall be initiated at the Board level. A preliminary hearing to develop a record or recommendation for the Board may be conducted by an appropriate administrator.

If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

Option to Continue Informal Process

Even after initiating the formal complaint process, the employee is encouraged to seek informal resolution of their concerns. An employee whose concerns are resolved may withdraw a formal complaint at any time.

Notice of Complaint

A District employee against whom a complaint has been filed shall be provided notice of the complaint in accordance with administrative regulations. The employee shall have sufficient opportunity to submit a written response to the complaint that shall be included in the record of the complaint.

Freedom from Retaliation

Neither the Board nor any District employee shall unlawfully retaliate against an employee for bringing a concern or complaint.

Whistleblower Complaints

Whistleblower complaints shall be filed within the time specified by law and may be made beginning at Level Two. Timelines for the employee and the District set out in this policy may be shortened to allow the Board to make a final decision within 60 calendar days of the initiation of the complaint. [See DG]

Complaints Against Supervisors

Complaints alleging a violation of law by a supervisor may be made to the Superintendent. Complaints alleging a violation of law by the Superintendent may be submitted directly to the Board or Board's designee.

Direct Communication with Board Members

Employees shall not be prohibited from communicating with a member of the Board regarding District operations except when communication between an employee and a Board member would be inappropriate because of a pending hearing or appeal related to the employee.

General Provisions

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, or by U.S. Mail. Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on the deadline. Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are postmarked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three business days after the deadline.

Scheduling Hearings

The District shall make reasonable attempts to schedule hearings at a mutually agreeable time. If the employee fails to appear at a scheduled hearing, the District may hold the hearing and issue a decision in the employee's absence.

Decision

A "decision" shall mean a written communication to the employee from the appropriate administrator that provides an explanation of the basis of the decision, an indication of each document that supports the decision, and any relief or redress to be provided. A decision shall be issued on the merits of the concern raised in the complaint notwithstanding any procedural errors or the type of relief or redress requested.

The decision shall also include information regarding the filing of an appeal in accordance with this policy. After a hearing at Level Three, the decision shall include information on submitting an appeal to the commissioner.

A decision may be hand-delivered, sent by electronic communication to the employee's email address of record, or sent by U.S. Mail

to the employee's mailing address of record. Mailed decisions shall be timely if they are postmarked by U.S. Mail on or before the deadline.

Representative

"Representative" shall mean any person who or an organization that does not claim the right to strike and is designated by the employee to represent the employee in the complaint process.

The employee may designate a representative through written notice to the District at any level of this process. The representative may participate in person or by telephone conference call. If the employee designates a representative with fewer than three business days' notice to the District before a scheduled hearing, the District may reschedule the hearing to a later date, if desired, in order to include the District's counsel. The District may be represented by counsel at any level of the process.

Consolidating Complaints

To promote efficiency in addressing complaints, the appropriate administrator shall determine if separate or serial complaints arising from an event or series of related events shall be consolidated.

Costs Incurred

Each party shall pay its own costs incurred in the course of the complaint.

Complaint and Appeal Forms

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

Copies of any documents that support the complaint should be included with the complaint form. If the employee does not have copies of these documents, copies may be presented at the Level One hearing. After the Level One hearing, the employee may supplement the record with additional documents or include additional claims.

Record

A record of each complaint hearing shall be created and retained in accordance with this policy. The record shall include documents submitted by the employee who filed the complaint, documents determined relevant by District personnel, and the decision.

Remand

A complaint or appeal form that is incomplete in any material aspect shall be refiled, if at Level One, and remanded at all other levels in order to develop an adequate record of the complaint.

If an adequate record has not been developed, the appropriate administrator may remand the complaint to a lower level. The Board or Board committee may remand a complaint to a lower level if at the Board level of review an adequate record has not been developed.

Assignment of Hearing Officer

When a District employee is the subject of a complaint, the hearing shall be conducted by an administrator who is in a supervisory or higher organizational role. The District employee who is the subject of the complaint shall recuse themselves from reviewing the complaint at any level in the process.

Investigation

The District may conduct an investigation at any level in the complaint process. If the District and the employee mutually agree, all deadlines shall be suspended during an investigation.

Audio Recording

As provided by law, an employee shall be permitted to make an audio recording of a hearing under this policy at which the substance of the employee's complaint is discussed. The employee shall notify all attendees present that an audio recording is taking place.

Complaint Levels

Level One

At Level One, the appropriate hearing officer shall hold a hearing with the employee within 10 calendar days after receipt of the written complaint. The hearing officer may set reasonable time limits for the hearing.

The hearing officer shall provide the employee a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider information provided with the complaint form and any other relevant documents or information the hearing officer believes will help resolve the complaint.

Level Two

If the employee did not receive the relief requested at Level One or if the time for a decision has expired, the employee may request a hearing at Level Two to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within 20 calendar days of the date of the Level One decision or, if no decision has been communicated to the employee, within 20 calendar days of the Level One decision deadline.

After receiving notice of the appeal, the Level One hearing officer shall prepare and forward a record of the Level One complaint to the Level Two hearing officer and provide a copy of the Level One record to the employee.

The Level One record shall include:

1. The original complaint form and any attachments.
2. Any other documents submitted by the employee at Level One.
3. If the complaint is against a District employee, the written response of the District employee, if any.

4. The decision issued at Level One and any attachments.

5. All other documents relied upon by the Level One hearing officer in reaching the Level One decision.

The hearing officer shall hold a hearing within 10 calendar days after the appeal notice is filed. The hearing officer may set reasonable time limits for the hearing.

The hearing officer shall provide the employee a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider the Level One record, any additional information provided prior to the Level Two hearing, and any other relevant documents or information the hearing officer believes will help resolve the complaint.

Recordings of the Level One and Level Two hearings, if any, shall be maintained with the Level One and Level Two records.

Level Three

If the employee did not receive the relief requested at Level Two or if the time for a decision has expired, the employee may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within 20 calendar days of the date of the Level Two decision or, if no decision has been communicated to the employee, within 20 calendar days of the Level Two decision deadline.

Unless the Board delegates a committee in accordance with law, the Board shall hear the appeal of the Level Two decision.

After receiving notice of the appeal, the Board or Board committee shall hold a meeting to discuss the complaint no later than 60 calendar days after the date on which the Level Two decision was made.

The Superintendent shall inform the employee whether the Board or a Board committee will hear the appeal and of the date, time, and place of the meeting at which the complaint will be on the agenda for presentation to the Board or Board committee.

At least five business days before the Board or Board committee meeting, the Superintendent shall provide the employee a description of any information the Board intends to rely on that is not contained in the record created at the previous hearing levels, including any preliminary hearing.

The Superintendent shall provide the Board the record of the Level Two appeal. The employee may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The notice of appeal from Level One to Level Two.
3. Any other documents submitted by the employee at Level Two.
4. The decision issued at Level Two and any attachments.
5. All other documents relied upon by the administration in reaching the Level Two decision.

The employee may request that the complaint be heard in open or closed meeting. The District shall honor that request unless the Texas Open Meetings Act or other applicable law requires otherwise. [See BE]

At the meeting, the presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the employee and administration to each make a presentation and provide rebuttal and an opportunity for questioning by Board members.

In addition to any other record of the meeting required by law, the Board or Board committee shall prepare a separate record of the Level Three presentation. The Level Three presentation, including the presentation by the employee or the employee's representative, any presentation from the administration, and questions from Board members with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board or Board committee shall then consider the complaint. It shall make a decision no later than 30 calendar days after the date of the Board or Board committee meeting at which the complaint was presented. The employee shall be provided a decision in accordance with this policy and state law.

Immunity from Individual Liability

The statutory immunity detailed below is in addition to and does not preempt the common law doctrine of official and governmental immunity. *Education Code 22.051(b)*

Professional Employees

A professional employee of a district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion, except in circumstances where, in disciplining a student, the employee uses excessive force or his or her negligence results in bodily injury to the student.

"Professional employee of a district" includes a superintendent; principal; teacher, including a substitute teacher or a teacher employed by a company that contracts with a district to provide the teacher's services to the district; a supervisor; social worker; school counselor; nurse; teacher's aide; a student in an education preparation program participating in a field experience or internship; a DPS-certified school bus driver, and any other person whose employment requires certification and the exercise of discretion.

Motor Vehicle Exception

Education Code 22.0511 does not apply to the operation, use, or maintenance of any motor vehicle.

Education Code 22.0511(a)-(b), .051; Hopkins v. Spring Indep. Sch. Dist., 736 S.W.2d 617 (Tex. 1987); Barr v. Bernhard, 562 S.W.2d 844 (Tex. 1978)

Individuals

In addition to the immunity described above [at Professional Employees], and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (Coverdell Act). [See Teachers, below] Nothing in Education Code 22.0511(c) shall be construed to limit or abridge any immunity or protection afforded an individual under state law. *Education Code 22.0511(c)*

No Waiver

A district may not, by policy, contract, or administrative directive:

1. Require an employee to waive the employee's immunity from liability under Education Code 22.0511; or
2. Require an employee who acts in good faith to pay for or replace property belonging to a student or other person that the employee possessed because of an act incident to or within the scope of employment. [See DG(LEGAL) at Instructional Materials and Technological Equipment]

Education Code 22.0511(d)

Teachers (Coverdell Act)

Except as provided in 20 U.S.C. Section 7946(b), no teacher in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if:

1. The teacher was acting within the scope of the teacher's employment or responsibilities to a school or governmental entity;
2. The actions of the teacher were carried out in conformity with federal, state, and local laws (including rules and regulations) in furtherance of efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school;
3. If appropriate or required, the teacher was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice involved in the state in which the harm occurred, where the activities were or practice was undertaken within the scope of the teacher's responsibilities;
4. The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher; and
5. The harm was not caused by the teacher's operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to:
    a. Possess an operator's license; or
    b. Maintain insurance.

"Teacher" means:

1. A teacher, instructor, principal, or administrator;
2. Another educational professional who works in a school;
3. An individual member of a school board (as distinct from the board); or
4. A professional or nonprofessional employee who works in a school, and:
    a. In the employee's job, maintains discipline or ensures safety; or

b. In an emergency, is called on to maintain discipline or ensure safety.

20 U.S.C. Sections 7943, 7946(a)

Report of Drug Offenses

A teacher, administrator, or other district employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property any of the following substances:

1. Marijuana or a controlled substance, as defined by the Texas Controlled Substances Act.
2. A dangerous drug, as defined by the Texas Dangerous Drug Act.
3. An abusable glue or aerosol paint, as defined by Health and Safety Code Chapter 485, or a volatile chemical, if the substance is used or sold for the purpose of inhaling its fumes or vapors.
4. An alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Education Code 37.016

Report to Local Law Enforcement

A principal or person designated by the principal is not liable in civil damages for making a good faith report to law enforcement, as required by law, of an activity specified at Education Code 37.015. *Education Code 37.015* [See GRAA]

Child Abuse and Maltreatment

The requirements of Education Code 38.0041 [regarding prevention of abuse and other maltreatment of children, see FFG] are considered to involve an employee's judgment and discretion and are not considered ministerial acts for purposes of immunity from liability under Education Code 22.0511 [see Immunity from Individual Liability, above]. *Education Code 38.0041* [See DG regarding protection from disciplinary proceedings]

Attendance Committee Membership

A member of an attendance committee is not personally liable for any act or omission arising out of duties as a member of an attendance committee. *Education Code 25.092(c)*

Administration of Medication

A district, a board, and its employees shall be immune from civil liability and administrative disciplinary action for damages or injuries resulting from the administration of medication to a student in accordance with Education Code 22.052. *Education Code 22.052(a), (b)* [See FFAC]

Immunity for Mental Health First Aid

A person who has completed a mental health first aid training program offered by a local mental health authority or local behavioral health authority and who in good faith attempts to assist an individual experiencing a mental health crisis is not liable in civil damages for an act performed in attempting to assist the individual unless the act is willfully or wantonly negligent. *Health and Safety Code 1001.206.*

Immunity for Shelter Workers

An officer or employee of a district is not civilly liable for an act performed in the discharge of duty if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster. *Gov't Code 418.006, 437.222*

Immunity for Disciplinary Actions

A professional employee of a school district may not be subject to disciplinary proceedings for:

1. The reporting of a violation of Education Code Chapter 37 to another professional employee of a school district, the agency, or a law enforcement agency; or
2. An action taken in good faith to remove a student from class under Education Code 37.002.

The immunity provided by Education Code 22.05121(b) is in addition to any other immunity provided by law. This section may not be construed to interfere with any other immunity provided by law.

"Disciplinary proceeding" means:

1. An action brought by the school district employing a professional employee of a school district to discharge or suspend the employee or terminate or not renew the employee's term contract; or
2. An action or proceeding brought by the State Board for Educator Certification (SBEC).

Education Code 22.05121

Liability for Causing Exposure to Pandemic Disease

A person is not liable for injury or death caused by exposing an individual to a pandemic disease during a pandemic emergency except as provided by Civil Practice and Remedies Code Chapter 148. *Civ. Prac. & Rem. Code 148.003(a)*

Educator Ethics

Educators shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom.

The State Board for Educator Certification (SBEC) shall provide for the adoption, amendment, and enforcement of an educator's code of ethics [see DH(EXHIBIT)]. SBEC is solely responsible for enforcing the ethics code for purposes related to certification disciplinary proceedings.

Education Code 21.041(b)(8); 19 TAC 247.1(b), (c)

Duty to Report

Any person who has reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as required by law. *Family Code 261.101(a)* [See FFG]

Public Servants

All district employees are "public servants" and therefore subject to Title VIII of the Penal Code, regarding offenses against public administration, including restrictions on the acceptance of illegal gifts, honoraria and expenses, and abuse of office. *Penal Code 1.07(a)(41), Title VIII* [See DBD and BBFA]

Electronic Communication Policy

"Electronic communication" means any communication facilitated by the use of any electronic device, including a telephone, cellular telephone, computer, computer network, personal data assistant, or pager. The term includes emails, text messages, instant messages, and any communications made through a website, including a social media website or a social networking website.

A school district shall adopt a written policy concerning electronic communications between a school employee and a student enrolled in the district.

The policy adopted under this section must:

1. Include provisions designed to prevent improper electronic communications between a school employee and a student;
2. Allow a school employee to elect to not disclose to students the employee's personal telephone number or email address; and
3. Include provisions instructing a school employee about the proper method for notifying appropriate local administrators about an incident in which a student engages in improper communications with the school employee.

Education Code 38.027

Retaliation Against Grievant

The district grievance policy prohibits a district employee from retaliating against a student or parent of or person standing in parental relation to a student who files a grievance in accordance with the district grievance policy. If the commissioner determines that an educator has retaliated against a student or parent of or person standing in parental relation to a student who files a grievance under the district's grievance policy, the commissioner may report the educator to SBEC for investigation. *Education Code 26A.001(e)(1), (i)* [See DGBA]

Social Transitioning

The board shall adopt a policy prohibiting an employee of the district from assisting a student enrolled in the district with social transitioning, including by providing any information about social transitioning or providing guidelines intended to assist a person with social transitioning.

"Social transitioning" means a person's transition from the person's biological sex at birth to the opposite biological sex through the adoption of a different name, different pronouns, or other expressions of gender that deny or encourage a denial of the person's biological sex at birth.

A parent of a student enrolled in the district or a district employee may report to the board of trustees of the district a suspected violation of this policy. The board shall investigate any suspected violation and determine whether the violation occurred. If the board determines that a district employee has assisted a student enrolled at the district with social transitioning, the board shall immediately report the violation to the commissioner.

A parent of a student enrolled in a district may seek relief for a violation by filing a grievance through the district's grievance procedure.

Education Code 11.401-.402

Public Information on Private Device

A current or former board member or employee of a district who maintains public information on a privately owned device shall:

1. Forward or transfer the public information to the district or a district server to be preserved as provided by Government Code 552.004(a); or
2. Preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under 552.004(a).

Gov't Code 552.004(b) [See GB]

Loss of Retirement Annuity for Conviction of Certain Felonies

A person is not eligible to receive a service retirement annuity from the Teacher Retirement System (TRS) if the person is convicted of a qualifying felony and the victim is a student.

"Qualifying felony" means an offense that is punishable as a felony under the following sections of the Penal Code:

1. Section 21.02 (continuous sexual abuse of young child or disabled individual);
2. Section 21.12 (improper relationship between educator and student);
3. Section 22.011 (sexual assault) or Section 22.021 (aggravated sexual assault); or
4. Section 43.24 (sale, distribution, or display of harmful material to minor).

The term includes any federal offense that contains elements that are substantially similar to the elements of a felony offense described above.

Not later than the 30th day after the date of a person's conviction for a qualifying felony, the school at which the person was employed shall provide written notice of the conviction to TRS. The notice must comply with rules adopted by TRS.

Gov't Code 824.009

Transportation or Storage of Firearm in School Parking Area

A district may not prohibit a school employee who holds a license to carry a handgun under Government Code, Chapter 411, Subchapter H, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the district and may not regulate the manner in which the handgun, firearm, or ammunition is stored in the vehicle, provided that the handgun, firearm, or ammunition is not in plain view.

This does not authorize a person to possess, transport, or store a handgun, a firearm, or ammunition in violation of Education Code 37.125, Penal Code 46.03, or other law. [See GKA]

Education Code 37.0815

Tobacco and E-Cigarettes

A board shall prohibit smoking or using e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property.

Enforcement

A board shall ensure that district personnel enforce the policies on school property.

Education Code 38.006(b) [See also FNCD and GKA]

Drug and Alcohol Abuse Program

A board shall prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property. *Education Code 38.007(a)*

Federal Drug-Free Workplace Act

A district that receives a direct federal grant must agree to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the district's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
2. Establishing a drug-free awareness program to inform employees about:
    a. The dangers of drug abuse in the workplace;
    b. The district's policy of maintaining a drug-free workplace;
    c. Available drug counseling, rehabilitation, and employee assistance programs; and
    d. The penalties that may be imposed on employees for drug abuse violations;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the required statement;
4. Notifying the employee in the required statement that as a condition of employment in the grant the employee will:
    a. Abide by the terms of the statement; and
    b. Notify the district of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;
5. Notifying the granting agency within 10 days after receiving notice from an employee or otherwise receiving actual notice of a conviction;
6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by 41 U.S.C. section 8104; and

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the above requirements.

41 U.S.C. 8103(a)(1)

Dietary Supplements

Except as provided at Education Code 38.011(b), a district employee may not:

1. Knowingly sell, market, or distribute a dietary supplement that contains performance-enhancing compounds to a primary or secondary education student with whom the employee has contact as part of the employee's duties; or

2. Knowingly endorse or suggest the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance-enhancing compounds by a primary or secondary student with whom the employee has contact as part of the employee's duties.

An employee who violates items 1 or 2, above, commits a Class C misdemeanor offense.

Education Code 38.011

Low-THC Cannabis

A district may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the storage or possession of low-THC cannabis, as authorized by Health and Safety Code Chapter 487. *Health and Safety Code 487.201*

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 DH(EXHIBIT)]

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. 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
2. 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 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 DH(EXHIBIT)], an employee shall be prohibited from using electronic communications in a manner that constitutes prohibited harassment or abuse of a District student; adversely affects the student's learning, mental health, or safety; includes threats of violence against the student; reveals confidential information about the student; or constitutes an inappropriate communication with a student, as described in the Educators' Code of Ethics.

An employee shall have no expectation of privacy in electronic communications with students. Each employee shall comply with the District's requirements for records retention and destruction to the extent those requirements apply to electronic communication. [See CPC]

Personal Use

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.

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.]

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
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.

Recordings — No employee may make an unauthorized audio, visual, or photographic recording of a conversation, meeting, or co-worker on District property or in connection with District business unless the employee making the recording notifies all participants and ensures the recording device is in plain view for the duration of the recording. Secret recordings are prohibited. Employees shall comply with

all restrictions on the use of personal recording devices set forth in CQ(LOCAL).

These provisions are not intended to limit or restrict recordings involving authorized investigations conducted by District personnel or any meeting recorded in accordance with Board policy, including Board meetings, grievance hearings, and audio recordings of meetings or proceedings at which the substance of an employee grievance is discussed. [See DGBA; see also CQ]

For audio or video recording of a student by an employee, see FL(LEGAL).

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.

Note: This policy applies to a district of innovation under Education Code, Chapter 12A. [See AF]

Permissive Reports

The superintendent may notify the State Board for Educator Certification (SBEC) of any educator misconduct that he or she believes in good faith may be subject to sanctions under 19 Administrative Code, Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, and/or Chapter 247, Educators' Code of Ethics. *19 TAC 249.14(d)*

Required Reports

A superintendent shall notify SBEC if:

1. An educator employed by or seeking employment with the district, or an applicant or holder of an SBEC certificate, has a criminal record and the district obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established by the Texas Department of Public Safety under Government Code 411.0845;
2. An educator's employment at the district was terminated and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct After Termination or Resignation, below];
3. The educator resigned and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct After Termination or Resignation, below]; or
4. The superintendent becomes aware of evidence than an educator employed by the district engaged in the misconduct listed below [see Reportable Misconduct Regardless of Termination or Resignation, below].
5. The educator engaged in conduct that violated the assessment instrument security procedures established under Education Code 39.0301.

Education Code22A.051, 22.087; 19 TAC 249.14(d)

Reportable Misconduct Regardless of Termination or Resignation

The superintendent shall make a report to SBEC under item 4 [Required Reports], above, if an educator:

1. Abused or otherwise committed an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9 of the Penal Code, Justification Excluding Criminal Responsibility, regardless of whether the conduct resulted in bodily injury;

2. Was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact with a student or minor;

3. Engaged in inappropriate communications with a student or minor; or

4. Failed to maintain appropriate boundaries with a student or minor.

Education Code 22A.051(2)(A)-(D), (4)

Deadline to Report

The superintendent must notify SBEC by filing a report not later than 48 hours after the superintendent receives notice from a principal [see DP(LEGAL)] or becomes aware of evidence of misconduct described above [Reportable Misconduct Regardless of Termination or Resignation]. *Education Code 22A.051(d)(2)*

Reportable Misconduct After Termination or Resignation

A superintendent shall make a report to SBEC under items 2 and 3 at Required Reports, above, if an educator was terminated or resigned and there is evidence that the educator:

1. Abused or otherwise committed an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9 of the Penal Code, Justification Excluding Criminal Responsibility, regardless of whether the conduct resulted in bodily injury;

2. Was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact with a student or minor;

3. Engaged in inappropriate communications with a student or minor;

4. Failed to maintain appropriate boundaries with a student or minor;

5. Possessed, transferred, sold, or distributed a controlled substance, as defined by Health and Safety Code Chapter 481, or by 21 U.S.C. 801 et seq.;

6. Illegally transferred, appropriated, or expended school property or funds;

7. Attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or

8. Committed a criminal offense, or any part of a criminal offense, on school property or at a school-sponsored event.

Education Code 22A.051(a); 19 TAC 249.14(d)

Deadline to Report After Termination or Resignation

The superintendent shall notify SBEC in writing by filing a report within seven business days after the date the superintendent receives notice from a principal [see DP]or knew about an educator's termination or resignation following an alleged incident of misconduct described above at Reportable Misconduct After Resignation or Termination or about an educator's criminal record described under Education Code 22A.051(d). *Education Code 22A.051(d)(1)* [See Required Reports, above]

Investigation After Termination or Resignation

A superintendent shall complete an investigation of an educator that involves evidence that the educator may have engaged in misconduct described above at Reportable Misconduct After Termination or Resignation, items 1, 2, 3, or 4, despite the educator's resignation from employment before completion of the investigation. *Education Code 22A.051(b); 19 TAC 249.14(d)(3)(C)*

Contents of Report

The report must be in writing and in a form prescribed by SBEC and filed through a confidential and secure internet portal developed and maintained by TEA under Education Code 22A.155. The report shall include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator and the factual circumstances requiring the report and the subject of the report by providing the following available information:

1. Name and any aliases;
2. Certificate number, if any, or social security number;
3. Last known mailing address and home and daytime phone numbers;
4. All available contact information for any alleged victim or victims;
5. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
6. Current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
7. Involvement by a law enforcement or other agency, including the name of the agency.

Education Code 22A.051(e); 19 TAC 249.14(f)

The name of the student or minor is not public information under the Public Information Act. [See GBAA] *Education Code 22(A).051(j)*

Notice

To the Board and Educator

A superintendent shall notify the board and the educator of the filing of a written report with SBEC. *Education Code 22A.051(f)*

Before Accepting Resignation

Before accepting an employee's resignation that requires filing a report, the superintendent shall inform the educator in writing that a report will be filed and that sanctions against his or her certificate may result as a consequence. *19 TAC 249.14(d)(3)(A)*

Policy to Notify Parents

The board shall adopt a policy under which notice is provided to the parent or guardian of a student with whom an educator is alleged to have engaged in misconduct described Reportable Conduct Regardless of Termination or Resignation. [See FFF] *Education Code 22A.053.*

Sanctions for Failure to Report

SBEC shall determine whether to impose sanctions, including an administrative penalty against a superintendent who fails to file a report. *Education Code 22A.051(h); 19 TAC 249.14(d), (h), .15(b)(4)*

Administrative Penalty

If a superintendent is required to file a report and fails to file the report by the required date, SBEC may impose an administrative penalty of not less than $500 and not more than $10,000. SBEC may not renew the certification of an educator against whom an administrative penalty is imposed until the penalty is paid. *Education Code 22A.051(k)*

Criminal Offense

A superintendent required to file a report commits a state jail felony if the superintendent fails to file the report by the required date with intent to conceal an educator's criminal record or alleged incident of misconduct. *Education Code 22A.051(l)*

Immunity

A superintendent or principal who, in good faith and while acting in an official capacity, files a report with SBEC or communicates with another superintendent or principal concerning an educator's criminal record or alleged incident of misconduct is immune from civil or criminal liability that might otherwise be incurred or imposed. *Education Code 22A.051(g)*

Definitions

Abuse

“Abuse” has the meaning assigned by Family Code 261.001(1) and includes any sexual conduct involving a student or minor. *Education Code 22A.001(1)*

“Abuse” includes the following acts or omissions:Mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning;

2. Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an

observable and material impairment in the child's growth, development, or psychological functioning;

3. Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; or

4. Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

5. Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuing sexual abuse of a young child or disabled individual under Penal Code 21.02, indecency with a child under Penal Code 21.11, improper relationship between educator and student under Penal Code 21.12, sexual assault under Penal Code 22.011, or aggravated sexual assault under Penal Code 22.021;

6. Failure to make a reasonable effort to prevent sexual conduct as defined by Penal Code 43.01, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Penal Code 20A.02(a)(7) or (8), solicitation of prostitution under Penal Code 43.05(a)(2);

7. Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Penal Code 43.21, or pornographic;

8. The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

9. Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Penal Code 43.25;

10. Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Penal Code 20A.02(a)(5), (6), (7), or (8), or the failure to make a reasonable effort to prevent a child from be-

ing trafficked in a manner punishable as an offense under any of those sections; or

11. Forcing or coercing a child to enter into a marriage.

19 TAC 249.3(1); Family Code 261.001(1)

Reported Criminal History

"Reported criminal history" means information concerning any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, criminal information, convictions, deferred adjudications, and probations in any state or federal jurisdiction. *19 TAC 249.3(44)*

Solicitation of a Romantic Relationship

"Solicitation of a romantic relationship" means deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or patterns of exclusivity, but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:

1. Behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior include:

    a. The nature of the communications;

    b. The timing of the communications;

    c. The extent of the communications;

    d. Whether the communications were made openly or secretly;

    e. The extent that the educator attempts to conceal the communications;

    f. If the educator claims to be counseling a student, SBEC may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and

g. Any other evidence tending to show the context of the communications between educator and student.

2. Making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images.

3. Making sexually demeaning comments to a student.

4. Making comments about a student's potential sexual performance.

5. Requesting details of a student's sexual history.

6. Requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator.

7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party.

8. Inappropriate hugging, kissing, or excessive touching.

9. Providing the student with drugs or alcohol.

10. Violating written directives from school administrators regarding the educator's behavior toward a student.

11. Grooming behaviors, considered in context and on the totality of circumstances, including, but not limited to:

    a. Showing the student special attention;

    b. Giving the student individual gifts, money, or privileges;

    c. Isolating the student;

    d. Exposing the student to adult topics or conversations and/or media that is not age appropriate; or

    e. Meeting behind closed doors with the student without another adult present.

12. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage.

13. Any other acts tending to show that the educator solicited a romantic relationship with the student.

19 TAC 249.3(51)

[See DHC for provisions regarding solicitation of sexual contact.]

Note: The provisions of this policy apply to a district of innovation under Education Code, Chapter 12A. [See AF]

Definitions

"Abuse" has the meaning assigned by Family Code 261.001(1) and includes any sexual conduct involving a student or minor. [See DHB] *Education Code 22A.001(1)*

"Employee" means a person who is employed by a school district, district of innovation, charter school, service center, or shared services arrangement and does not hold a certification issued by the State Board for Educator Certification (SBEC) under Education Code, Chapter 21, Subchapter B.

19 TAC 153.1201(b), (d)

Misconduct of Noncertified Employees

Education Code 22A.052 applies to a district employee who does not hold certification issued by SBEC or a school district teaching permit.

Reportable Misconduct

A person who serves as the superintendent shall notify the commissioner if the superintendent obtains criminal history record information relating to or becomes aware of evidence that an employee:

1. Abused or otherwise committed an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9 of the Penal Code, Justification Excluding Criminal Responsibility, regardless of whether the conduct resulted in bodily injury;
2. Was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact, defined below, with a student or minor;
3. Engaged in inappropriate communications with a student or minor; or
4. Failed to maintain appropriate boundaries with a student or minor.

Education Code 22A.052(b)

Deadline to Report

The superintendent must notify the commissioner by filing a report with the commissioner not later than 48 hours after the superintendent receives notice from a principal [see DP(LEGAL)], knew about the termination or resignation following an allegation of misconduct, or becomes aware of evidence of misconduct described above. *Education Code 22A.052(e)*

Investigation After Termination or Resignation

A superintendent shall complete an investigation of an employee that involves evidence that the employee may have engaged in misconduct described above [Reportable Misconduct], despite the employee's resignation from district employment before completion of the investigation. *Education Code 22A.052(c)*

Contents of Report

The report must be in writing and in a form prescribed by the commissioner and filed through an internet portal developed and maintained by the Texas Education Agency (TEA). The report shall include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an employee and the factual circumstances requiring the report and the subject of the report by providing the following available information:

1. The name or names of any student or minor who is the victim of abuse or unlawful conduct by an employee;
2. The factual circumstances requiring the report and the subject of the report by providing the following available information:
    a. Name and any aliases and certificate number, if any, or social security number;
    b. Last known mailing address and home and daytime phone numbers;
    c. All available contact information for any alleged victim or victims;
    d. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
    e. Current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
    f. Involvement by a law enforcement or other agency, including the name of the agency.

Education Code 22A.052(f); 19 TAC 150.1203(d)

The name of the student or minor is not public information under Government Code Chapter 552 (Public Information Act) [see GBAA]. *Education Code 22A.052(j)*

Notice to the Board and Employee

A superintendent shall notify the board and the employee of the filing of the report. *Education Code 22A.052(g)*

Immunity

A superintendent who in good faith and while acting in an official capacity files a report or makes a notification is immune from civil

or criminal liability that might otherwise be incurred or imposed. *Education Code 22A.052(h)*

Sanctions for Failure to Report

The commissioner shall refer an educator who fails to file a report to SBEC, which will determine whether to impose sanctions against the educator. *Education Code 22A.052(i)*

Criminal Offense

A superintendent required to file a report commits a state jail felony if the superintendent fails to timely file the report with intent to conceal an employee's criminal record or alleged incident of misconduct. *Education Code 22A.052(k)*

Review of District Records

The commissioner may review district records to ensure compliance with the requirement to report misconduct. *Education Code22A.052(l)*

Solicitation of Sexual Contact

"Solicitation of sexual contact" means deliberate or repeated acts that can be reasonably interpreted as the solicitation by an employee of a relationship with a student that is sexual in nature. Solicitation of sexual contact is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an employee of sexual contact with a student:

1. Behavior, gestures, expressions, or communications with a student that are unrelated to the employee's job duties and evidence a sexual intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the intent of such communications or behavior, include, without limitation:
    a. The nature of the communications;
    b. The timing of the communications;
    c. The extent of the communications;
    d. Whether the communications were made openly or secretly;
    e. The extent that the employee attempts to conceal the communications;
    f. If the employee claims to be counseling a student, the commissioner of education may consider whether the employee's job duties included counseling, whether the employee reported the subject of the counseling to the student's guardians or to the appropriate school person-

nel, or, in the case of alleged abuse or neglect, whether the employee reported the abuse or neglect to the appropriate authorities; and

g. Any other evidence tending to show the context of the communications between employee and student;

2. Making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;

3. Making sexually demeaning comments to a student;

4. Making comments about a student's potential sexual performance;

5. Requesting details of a student's sexual history;

6. Requesting a date, sexual contact, or any activity intended for the sexual gratification of the employee;

7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;

8. Inappropriate hugging, kissing, or excessive touching;

9. Providing the student with drugs or alcohol;

10. Violating written directives from school administrators regarding the employee's behavior toward a student;

11. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and

12. Any other acts tending to show that the employee solicited sexual contact with a student.

19 TAC 153.1201(a)

[See DHB for provisions regarding solicitation of a romantic relationship.]

Staff Development

Educator

The staff development provided by a district to an educator other than a principal must be conducted in accordance with standards developed by the district and designed to improve education in the district.

Principal

The staff development provided by a district to a principal shall be governed by Education Code 21.3541 and rules adopted under that section. [See DNB]

Education Code 21.451(a), (a-1)

Professional Development Policy

A board shall annually review the SBEC continuing education and training clearinghouse published under Education Code 21.4514 and adopt a professional development policy that must:

1. Be guided by the recommendations for training in the clearinghouse;
2. Note any differences in the policy adopted by the district or school from the recommendations in the clearinghouse; and
3. Include a schedule of all training required for educators or other school personnel at the district or school.

To the extent of any conflict, a frequency requirement for the completion of training provided by statute prevails over a frequency requirement for that training included in the professional development policy.

Education Code 21.4515(a), (b)

Requirements for Training

In designing staff development for educators other than principals, a district must use procedures that, to the greatest extent possible, ensure the training included in the staff development:

1. Incorporates proactive instructional planning techniques using a framework that:
    a. Provides flexibility in the ways:
        (1) Information is presented;
        (2) Students respond or demonstrate knowledge and skills; and
        (3) Students are engaged;
    b. Reduces barriers in instruction;
    c. Provides appropriate accommodations, supports, and challenges; and

d. Maintains high achievement expectations for all students, including students with disabilities and students of limited English proficiency; and

2. Integrates inclusive and evidence-based instructional practices for all students, including students with disabilities.

Staff development shall be predominantly campus-based, related to achieving campus performance objectives, and developed and approved by the campus-level committee.

A district may use district-wide staff development that has been developed and approved through the district-level decision process. [See BQA and BQB, as appropriate]

Education Code 21.451(a-2), (b), (c)

Optional Training

Staff development may include training in:

1. Technology and digital learning; and

2. Positive behavior intervention and support strategies, including classroom management, district discipline policies, and the Student Code of Conduct.

Technology and digital learning training must:

1. Discuss basic technology proficiency expectations and methods to increase an educator's digital literacy; and

2. Assist an educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices.

Staff development may include instruction as to what is permissible under law, including opinions of the United States Supreme Court, regarding prayer in public school.

Education Code 21.451(d)(1), (d-3), (g)

Required Training

Staff development must include training on:

1. Suicide prevention;

2. Strategies for establishing and maintaining positive relationships among students, including conflict resolution; and

3. Preventing, identifying, responding to, and reporting incidents of bullying.

Required training above must be provided in accordance with the board’s professional development policy and use a best practice-based program recommended by the Health and Human Services

Commission under Education Code 38.351 [see FFEB]. Required training may include two or more topics listed together.

Education Code 21.451(d)(3), (d-1)

Instruction of Students with Disabilities

Definition

"Student with a disability" means a student who is:

1. Eligible to participate in a school district's special education program under Education Code 29.003;
2. Covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794); or
3. Covered by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

Education Code 21.001(3-a)

Requirements

Staff development must include training that is evidence-based, as defined by Section 8101, Every Student Succeeds Act (20 USC 7801), and that:

1. Relates to the instruction of students with disabilities, including students with disabilities who also have other intellectual or mental health conditions; and
2. Is designed for educators who work primarily outside the area of special education.

A district is required to provide the training to an educator who works primarily outside the area of special education only if the educator does not possess the knowledge and skills necessary to implement the individualized education program developed for a student receiving instruction from the educator. A district may determine the time and place at which the training is delivered.

In developing or maintaining the training, a district must consult with persons with expertise in research-based practices for students with disabilities, including colleges, universities, private and nonprofit organizations, regional education service centers, qualified district personnel, and any other persons identified as qualified by the district, regardless of whether the training is provided at the campus or district level.

Education Code 21.451(d)(2), (e)-(f)

Suicide Prevention

The required suicide prevention training may be satisfied through independent review of suicide prevention training material that complies with the guidelines developed by the Texas Education Agency (TEA) and is offered online. *Education Code 21.451(d-2); 19 TAC 153.1013(d)*

Suicide prevention programs on TEA's list of recommended best practice-based programs [see FFEB] must include components that provide for training school counselors, teachers, nurses, administrators, and other staff, as well as law enforcement officers and social workers who regularly interact with students, to:

1. Recognize students at risk of attempting suicide, including students who are or may be the victims of or who engage in bullying;

2. Recognize students displaying early warning signs and a possible need for early mental health or substance abuse intervention, which warning signs may include declining academic performance, depression, anxiety, isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others;

3. Intervene effectively with students described above by providing notice and referral to a parent or guardian so appropriate action, such as seeking mental health or substance abuse services, may be taken by a parent or guardian; and

4. Assist students in returning to school following treatment of a mental health concern or suicide attempt.

A district shall provide training described in the components above for teachers, school counselors, principals, and all other appropriate personnel. A district is required to provide the training at an elementary school campus only to the extent that sufficient funding and programs are available. A school district may implement a program on TEA's list of recommended best practice-based programs [see FFEB] to satisfy this training requirement.

If a district provides the training, a district shall require completion in accordance with the district's professional development policy and maintain records that include district employees who participated in the training.

A district may satisfy a requirement to implement a program in the area of substance abuse prevention and intervention by providing instruction related to youth substance use and abuse education under Education Code 38.040. [See EHAC]

Education Code 38.351(e), (g), (g-1), (h); 19 TAC 153.1013

Staff Development Account

A district that receives resources from the commissioner of education's staff development account must pay to the commissioner for deposit in the account an amount equal to one-half of the cost of the resources provided to the district. *Education Code 21.453(c)*

Child Abuse, Trafficking, and Maltreatment

A district's methods for increasing awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children [see District Improvement Plan at BQ and Sexual Abuse, Trafficking, and Maltreatment Policies and Programs at FFG] must include training concerning prevention techniques for and recognition of sexual abuse, sex trafficking, and all other maltreatment of children, including the sexual abuse, sex trafficking, and other maltreatment of children with significant cognitive disabilities.

The training must be provided in accordance with the district's professional development policy and as part of new employee orientation to all new employees.

The training must include:

1. Factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;
2. Warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;
3. Internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;
4. Techniques for reducing a child's risk of sexual abuse, trafficking, or other maltreatment; and
5. Information on community organizations that have relevant research-based programs and that are able to provide training or other education for district staff, students, and parents.

A district must maintain records that include staff members who participated in the training.

To the extent that resources are not yet available from TEA or the commissioner of education, districts shall implement the policies and trainings with existing or publicly available resources. The district may also work in conjunction with a community organization to provide the training at no cost to the district.

Education Code 38.0041(c)-(f); 19 TAC 103.1401(d)

Trauma-Informed Care

A district's efforts to increase awareness and implementation of trauma-informed care must include training to new and existing employees in accordance with the district's professional development policy. [See BQ, FFBA] *Education Code 38.036(c)*

Mental Health

A district shall require each district employee who regularly interacts with students enrolled at the district to complete an evidence-

based mental health training program designed to provide instruction to participants regarding the recognition and support of children and youth who experience a mental health or substance use issue that may pose a threat to school safety.

A district may not require a district employee who has previously completed mental health training offered by a local mental health authority under Health and Safety Code 1001.203 to complete the required training.

Education Code 22.904

To complete the required evidence-based mental health training program, personnel who regularly interact with students shall participate and complete the general training program, participate and complete the training program related to local school district practices and procedures, and submit and maintain supporting documentation of completion. *19 TAC 153.1015(b)*

Records

School districts shall require each district employee to provide the certificate of completion of the general training program to the school district.

Documentation of the training program related to local school district practices and procedures may be satisfied when the employee submits to the district an acknowledgement form signed by the employee who received the current training and a copy of the local procedures and practices that are published in the district handbook and/or district improvement plan.

Documentation of training for the mental health training program must be kept by the school district and made available to TEA upon request, which may include a reporting process, for the duration of the employee's employment with the district.

19 TAC 153.1015(f)(1)-(3)

Student Discipline

Each principal or other appropriate administrator who oversees student discipline shall, at least once every three school years, attend professional development training regarding Education Code Chapter 37, Subchapter G. The professional development shall include training relating to the distinction between a discipline management technique used at the principal's discretion under Education Code 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Education Code 37.002(b) [see FOA].

The professional development training may be provided in coordination with an education service center through the use of distance

learning methods, such as telecommunications networks, and using available TEA resources.

Education Code 37.0181

Test Administration

The commissioner may require training for district employees involved in the administration of assessment instruments. The commissioner may only require the employee at each district campus who oversees the administration of the assessment instruments to annually receive the training. The district employee who oversees test administration on a district campus may, with discretion, require other district employees involved in the administration of assessment instruments to repeat the training. *Education Code 39.0304(a), (b-1), (b-2)*

Cybersecurity

At least once each year, each employee of a district must complete a cybersecurity training program certified under Government Code 2063.102. *Gov't Code 2063.103(a)*

Notwithstanding Government Code 2063.103 above, only the district's cybersecurity coordinator is required to complete the cybersecurity training on an annual basis. Any other school district employee required to complete the cybersecurity training shall complete the training as determined by the district, in consultation with the district's cybersecurity coordinator. *Education Code 11.175(h-1)* [See CQB]

Artificial Intelligence Training

At least once each year, an employee of a school district must complete an artificial intelligence training program certified under Government Code 2054.5193. *Gov't Code 2054.5191(a)*

Notwithstanding Government Code 2054.5191, only the district's cybersecurity coordinator is required to complete the artificial intelligence training on an annual basis. Any other district employee required to complete the artificial intelligence training shall complete the training as determined by the district, in consultation with the district's cybersecurity coordinator. *Education Code 11.175(h-1)* [See CQD]

Special Programs

A district shall ensure that:

Teacher Literacy Achievement Academies (Reading Academies)

1. Not later than the 2022-23 school year, each classroom teacher in kindergarten or first, second, or third grade and each principal at a campus with kindergarten or first, second, or third grade has attended a teacher literacy achievement academy developed under Education Code 21.4552; and

2. Each classroom teacher and each principal initially employed in a grade level or at a campus described above for the 2022-23 school year or a subsequent school year has attended a

teacher literacy achievement academy developed under Education Code 21.4552 by the end of the teacher's or principal's first year of placement in that grade level or campus.

Education Code 28.0062(a)(2)

[See EHAB for kindergarten-grade 3 reading standards.]

Mathematics Achievement Academies

Each school district shall ensure that not later than the 2030-31 school year, each classroom teacher that provides instruction in mathematics to students in kindergarten through third grade and each principal, assistant principal, mathematics instructional coach, and mathematics interventionist at a campus with one of those grade levels has attended a teacher mathematics achievement academy developed under Education Code 21.4553 and each classroom teacher and principal initially employed in such a grade level or at a campus for the 2030-31 school year or a subsequent school year has attended a teacher mathematics achievement academy developed under Education Code 21.4553 by the end of the teacher's or principal's first year of placement in that grade level or campus. *Education Code 28.0071(a)(2)*

Gifted and Talented Education

A district shall ensure that:

1. Prior to assignment in the program or within one semester of assignment, teachers who provide instruction and services that are a part of the program for gifted/talented students [see EHBB] have a minimum of 30 hours of professional learning that includes nature and needs of gifted/talented students, assessing student needs, and curriculum and instruction for gifted/talented students;

2. Teachers who provide instruction and services that are a part of the program for gifted/talented students receive a minimum of six hours annually of professional learning in gifted/talented education; and

3. Administrators and counselors who have authority for program decisions have a minimum of six hours of professional learning that includes nature and needs of gifted/talented students and program options with an update after legislative sessions.

19 TAC 89.2

Elective Bible Course

A teacher of an elective Bible course offered under Education Code 28.011 [see EMI] must hold a certificate in language arts, social studies, or history that qualifies the teacher to teach at the grade level at which the course is offered with, where practical, a minor in religious or biblical studies. The teacher must successfully

complete staff development training developed by the commissioner for elective Bible courses. An elective Bible course may be taught only by a teacher who has successfully completed the commissioner's training under Education Code 21.459. *Education Code 28.011(f)*

Texas English Language Proficiency Assessment System Training

The employee assigned to oversee the administration of the Texas English Language Proficiency Assessment System (TELPAS) at a district campus may, with discretion, require other district employees involved in administering the TELPAS to complete training or online calibration activities described by Education Code 21.4571(a). An employee may not be required to complete a training or online calibration activity in one sitting. *Education Code 21.4571(b), (c)*

Automated External Defibrillators and CPR

A district shall, in accordance with its professional development policy, make available to employees and volunteers instruction in the principles and techniques of cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED).

Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other employee specified by the commissioner, and each student who serves as an athletic trainer, must participate in the instruction in CPR and the use of an AED. Identified employees must receive and maintain certification in CPR and the use of an AED from the American Heart Association, the American Red Cross, or a similar nationally recognized association.

Education Code 22.902

Extracurricular Activity Safety

The following persons must satisfactorily complete an extracurricular activity safety training program in accordance with the district's professional development policy:

1. A coach, trainer, or sponsor for an extracurricular athletic activity; and
2. A director responsible for a school marching band.

The safety training program must include:

1. Certification of participants by the American Red Cross, the American Heart Association, or a similar organization or by the University Interscholastic League;
2. Current training in:
    a. Emergency action planning;

b. Communicating effectively with 9-1-1 emergency service operators and other emergency personnel; and

c. Recognizing symptoms of potentially catastrophic injuries, including head and neck injuries, concussions, injuries related to second impact syndrome, asthma attacks, heatstroke, cardiac arrest, and injuries requiring use of a defibrillator; and

3. A safety drill that incorporates the training and simulates various injuries described above.

Education Code 33.202(b), (c); 19 TAC 76.1003

Records

A superintendent shall maintain complete and accurate records of the district's compliance and the district shall make available to the public proof of compliance for each person employed by or volunteering for the district who is required to receive safety training.

A campus that is determined by a superintendent to be out of compliance with the safety training requirements shall be subject to the range of penalties determined by the UIL.

Education Code 33.206; 19 TAC 76.1003(e)

Steroids

A district shall require that each employee who serves as an athletic coach at or above the seventh grade level for an extracurricular athletic activity sponsored or sanctioned by the UIL complete:

1. The educational program developed by the UIL regarding the health effects of steroids; or

2. A comparable program developed by the district or a private entity with relevant expertise.

Education Code 33.091(c-1)

Concussions

At least once every two years, the following employees shall take a training course from an authorized provider:

1. A coach of an interscholastic athletic activity shall take a course approved by the UIL that provides for not less than two hours of training in the subject matter of concussions, including evaluation, prevention, symptoms, risks, and long-term effects.

2. An athletic trainer who serves as a member of a district's concussion oversight team shall take a course concerning the subject matter of concussions that meets the requirements set by the Texas Department of Licensing and Regulation (TDLR).

3. A school nurse or licensed health-care professional, other than an athletic trainer, who serves as a member of a district's concussion oversight team shall take a course approved by the UIL for coaches or that meets the requirements set by TDLR for athletic trainers, or a course concerning the subject matter of concussions that has been approved for continuing education credit by the appropriate licensing authority for the profession.

The employee must submit proof of timely completion of an approved course to the superintendent or designee. A school nurse or licensed health-care professional who is not in compliance with these training requirements may not serve on a concussion oversight team in any capacity. [See FM]

Education Code 38.158

Seizure Recognition and Related First Aid

A school nurse employed by a district must complete a TEA-approved online course of instruction for school nurses regarding managing students with seizure disorders that includes information about seizure recognition and related first aid.

A district employee, other than a school nurse, whose duties at the school include regular contact with students must complete a TEA-approved online course of instruction for school personnel regarding awareness of students with seizure disorders that includes information about seizure recognition and related first aid.

Education Code 38.033(a), (b)

[See FFAF for information about a seizure management and treatment plan.]

Principal

Qualifications

A board, by local policy, shall adopt qualifications for principals. *Education Code 11.202(c)*

Certification

State Board for Educator Certification (SBEC) rules establish the requirements for receiving a principal certificate and for first-time principals in Texas. *19 TAC Ch. 241*

Duties

The principal shall be the instructional leader of the school and shall be provided with adequate training and personnel assistance to assume that role. *Education Code 11.202(a)*

A principal shall:

1. Approve all teacher and staff appointments for the campus. [See DK]
2. Set specific education objectives for the campus, through the planning process.
3. Develop budgets for the campus.
4. Assume administrative responsibility and instructional leadership, under the supervision of the superintendent, for discipline at the campus.
5. Assign, evaluate, and promote all personnel assigned to the campus.
6. Recommend to the superintendent the termination, suspension, or nonrenewal of an employee assigned to the campus.
7. Perform any other duties assigned by the superintendent pursuant to board policy.
8. Regularly consult with the campus-level committee in the planning, operation, supervision, and evaluation of the campus educational program. [See BQ series]
9. Each school year, with the assistance of the campus-level committee, develop, review, and revise the campus improvement plan. [See BQ]
10. For high school principals, serve, or appoint someone to serve, as deputy voter registrar for the county in which the school is located. *Election Code 13.046; 1 TAC 81.7*

Education Code 11.202(b), .253(c), (h) [See also DMA]

Principal's Report to Superintendent

Report of Educator Misconduct After Termination or Resignation

A principal must notify the superintendent not later than the seventh business day after the date the principal obtains criminal history record information relating to or becomes aware of evidence that an employee engaged in the following misconduct or of an educator's termination of employment or resignation following an alleged incident of the following misconduct:

1. Abused or otherwise committed an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9 of the Penal Code, Justification Excluding Criminal Responsibility, regardless of whether the conduct resulted in bodily injury;
2. Was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact with a student or minor;
3. Engaged in inappropriate communications with a student or minor;
4. Failed to maintain appropriate boundaries with a student or minor;
5. Possessed, transferred, sold, or distributed a controlled substance, as defined by Health and Safety Code Chapter 481, or by 21 U.S.C. 801 et seq.;
6. Illegally transferred, appropriated, or expended school property or funds;
7. Attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or
8. Committed a crime, or any part of a criminal offense, on school property or at a school-sponsored event.
9. Engaged in conduct that violated the assessment instrument security procedures established under Education Code 39.0301.

Education Code 22A.051(a), (c)(1); 19 TAC 249.14(e) [See DHB(LEGAL)]

Report of Misconduct by Educator or Other Employee

The principal must notify the superintendent not later than 48 hours after the principal becomes aware of evidence that an educator or other employee:

1. Abused or otherwise committed an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a stu-

dent or minor and that is not justified under Chapter 9 of the Penal Code, Justification Excluding Criminal Responsibility, regardless of whether the conduct resulted in bodily injury;

2. Was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact with a student or minor;

3. Engaged in inappropriate communications with a student or minor; or

4. Failed to maintain appropriate boundaries with a student or minor.

Education Code 22A.051(c)(2); .052(e) [See DHB, DHC]

Immunity

A principal who in good faith and while acting in an official capacity notifies a superintendent is immune from civil or criminal liability that might otherwise be incurred or imposed. *Education Code 22A.051(g), .052(h)*

Sanctions and Administrative Penalty

SBEC determines whether to impose sanctions, including an administrative penalty, against a principal who fails to provide notification to a superintendent. *Education Code 22A.051(h), 22A.052(i); 19 TAC 249.14(e), (h)*

If a principal is required to notify a superintendent about an educator's criminal record or alleged incident of misconduct and fails to provide the notice by the required date, SBEC may impose an administrative penalty of not less than $500 and not more than $10,000. SBEC may not renew the certification of an educator against whom an administrative penalty is imposed until the penalty is paid. *Education Code 22A.051(h); 22A.051(k)*

Criminal Offense

A principal required to notify a superintendent about an employee’s criminal record or alleged incident of misconduct commits a state jail felony if the principal fails to provide the notice by the required date with intent to conceal an person’s criminal record or alleged incident of misconduct. *Education Code 22A.051(l); 22A.052(k)*

School Nurse

Minimum Salary Schedule

For purposes of the minimum salary schedule, a school nurse is 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. *19 TAC 153.1022(a)(1)(D)*

Licensed Vocational Nurse

The practice of vocational nursing must be performed under the supervision of an RN, physician, physician assistant, podiatrist, or dentist. *Occupations Code 301.353*

Supervision is the process of directing, guiding, and influencing the outcome of an individual's performance of an activity. *22 TAC 217.11(2)*

Nursing Peer Review Committee

"Nursing peer review committee" includes a committee established under the authority of the governing body of a political subdivision for the purpose of conducting peer review.

A person shall establish a nursing peer review committee to conduct nursing peer review under Occupations Code Chapter 303 and Chapter 301:

1. For vocational nurses, if the person regularly employs, hires, or contracts for the services of eight or more nurses; and
2. For professional nurses, if the person regularly employs, hires, or contracts for the services of eight or more nurses, at least four of whom are RNs.

A person required to establish a nursing peer review committee under this section may contract with another entity to conduct peer review for the person.

Occupations Code 303.001(4), .0015

Certified School Counselor

Note: Education Code 33.002 regarding certified school counselors applies only to school districts that apply for, receive, and allocate funds under Education Code 33.002(a).

A district with 500 or more students enrolled in elementary school grades shall employ a certified school counselor for each elementary school and at least one school counselor for each 500 elementary school students [see DBA].

A district with fewer than 500 students enrolled in elementary school grades shall provide guidance and counseling services to elementary school students by any of the following methods:

1. Employing a part-time certified school counselor.
2. Employing a part-time teacher who is also certified as a school counselor.
3. Entering into a shared services agreement with one or more other districts to share a certified school counselor.

Education Code 33.002

Note: Education Code 33.006 applies to all districts that employ school counselors.

School Counselor Duties

The primary responsibility of a school counselor is to counsel students to fully develop each student's academic, career, personal, and social abilities. In addition, a school counselor shall:

1. Participate in planning, implementing, and evaluating a comprehensive developmental guidance program to serve all students and to address the special needs of students who are:
    a. At risk of dropping out of school, becoming substance abusers, participating in gang activity, or committing suicide;
    b. In need of modified instructional strategies; or
    c. Gifted and talented, with emphasis on identifying and serving gifted and talented students who are educationally disadvantaged;
2. Consult with students' parents or guardians and make referrals as appropriate in consultation with parents or guardians;
3. Consult with school staff, parents, and other community members to help them increase the effectiveness of students' education and promote student success;
4. Coordinate people and resources in the school, home, and community;
5. With the assistance of school staff, interpret standardized test results and other assessment data that help a student make educational and career plans;
6. Deliver classroom guidance activities or serve as a consultant to teachers conducting lessons based on the school's guidance curriculum; and
7. Serve as an impartial, non-reporting resource for interpersonal conflicts and discord involving two or more students, including accusations of bullying under Education Code 37.0832.

Nothing in item 7, above, exempts a school counselor from any mandatory reporting requirements imposed by other provisions of law.

School Counselor Policy

A board shall adopt a policy that requires a school counselor to spend at least 80 percent of the school counselor's total work time

on duties that are components of the district's comprehensive school counseling program under Education Code 33.005. [See FFEA] Time spent in administering assessment instruments or providing other assistance in connection with assessment instruments, except time spent in interpreting data from assessment instruments, is not considered time spent on counseling.

Each school in the district shall implement the policy. A copy of the policy shall be maintained in the office of each school in the district and made available on request during regular school hours to district employees, parents of district students, and the public.

Exception

If a board determines that, because of staffing needs in the district or at a school in the district, a school counselor must spend less than 80 percent of the school counselor's total work time on duties that are components of the district's comprehensive school counseling program, the policy shall:

1. Include the reasons why the counselor needs to spend less than 80 percent of the counselor's work time on duties that are components of the counseling program;
2. List the duties the counselor is expected to perform that are not components of the counseling program; and
3. Set the percentage of work time that the counselor is required to spend on components of the counseling program.

School Counselor Contracts

A district may not include a provision in an employment contract with a school counselor under Education Code Chapter 21 that conflicts with the policy or, except as provided below, has the effect of authorizing a school principal or school district superintendent to require a school counselor to generally perform duties that are not primarily related to a counseling function.

A district that complies with the exception above may not include a provision in an employment contract under Education Code Chapter 21 with an affected school counselor that has the effect of requiring the counselor to generally perform a duty that is not primarily related to a counseling function unless the duty is specified in the district's policy as required above.

Education Code 33.006(a)-(g)

Tracking and Documentation

A district shall require each district school counselor to track and document, using a standardized tracking tool, as established by the district, the time spent on work duties performed by the school counselor throughout a school year. This tracking tool shall:

1. Include the following components:

a. The total work time worked by the school counselor for the year;

b. The total time spent on the following duties that are components of a counseling program developed under Education Code 33.005:

(1) Provision of a guidance curriculum;

(2) Responsive services for students;

(3) Individual planning for students; and

(4) System support; and

c. The total time spent on duties that are not components of a counseling program developed under Education Code 33.005, including time spent in administering assessment instruments or providing other assistance in connection with assessment instruments (except time spent in interpreting data from assessment instruments); and

2. Be maintained by the district in a format that can be made available to the Texas Education Agency (TEA) upon request.

19 TAC 78.1003(b)

Annual Assessment

A district shall annually assess its compliance with its school counselor policy and, on request by the commissioner, provide a written copy of the assessment to TEA on or before the date specified by the commissioner.

The assessment shall include:

1. Work time tracking documentation as described above for each school counselor in the district;

2. The number of school counselors whose work was in compliance with the district's school counselor policy; and

3. The number of school counselors in the district whose work was not in compliance with the district's school counselor policy.

The assessment shall be maintained by the district in a format that can be made available to TEA upon request.

Education Code 33.006(h); 19 TAC 78.1003(c), (d)

Nonphysician Mental Health Professional

A district may employ or contract with one or more nonphysician mental health professionals.

In this section, “nonphysician mental health professional” means:

1. A psychologist licensed to practice in this state and designated as a health-service provider;
2. An RN with a master's or doctoral degree in psychiatric nursing;
3. A licensed clinical social worker;
4. A professional counselor licensed to practice in this state; or
5. A marriage and family therapist licensed to practice in this state.

Education Code 38.0101

Note: For information about mental health treatment, including counseling, see FFEA.

School Psychological Services

The rules of the Texas Behavioral Health Executive Council (TBHEC) acknowledge the unique difference in the delivery of school psychological services in schools from psychological services in the private sector. The TBHEC recognizes the purview of the State Board of Education (SBOE) and TEA in safeguarding the rights of school children in Texas. Mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in schools which reflect the occupational distinctions from the private practice of psychology. *22 TAC 465.38(a)*

School Psychologist

“School psychologist” means a person who holds a license to engage in the practice of psychology under Occupations Code 501.260. *Occupations Code 501.002(2); 0203(a)*

A person may not be employed by a school district as a school psychologist or associate school psychologist unless the person holds a specialist in school psychology license under Occupations Code 501.260. A specialist in school psychology license is the appropriate credential for a person who provides psychological services for a school district. *Education Code 21.003(b); Occupations Code 501.002(2), .260(a)*

School psychological services may be provided in Texas public schools only by school psychologists and interns and post-doctoral fellows working towards licensure as a psychologist. *22 TAC 465.38(e)*

Scope of Practice

A school psychologist is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions that attempt to improve the learning, adjustment, and behavior of students. These activities include, but are not limited to:

1. Addressing special education eligibility;
2. Conducting manifestation determinations;
3. Assisting with the development and implementation of individual educational programs (IEPs);
4. Conducting behavioral assessments; and
5. Designing and implementing behavioral interventions and supports.

The assessment of emotional or behavioral disturbance, solely for educational purposes, using psychological techniques and procedures is considered the practice of school psychology.

A school psychologist may not provide psychological services in any context or capacity outside of a public or private school.

22 TAC 465.38(b), (c)

Standards

The delivery of school psychological services in Texas public schools shall be consistent with nationally recognized standards for the practice of school psychology. *Occupations Code 501.260(c); 22 TAC 465.38(b)(3)*

Notice of Assignment or Subcontract

A school psychologist who contracts with a school to provide school psychological services must notify the school of any intent or plan to subcontract or assign those services to another provider prior to entering into the agreement. An LSSP shall be responsible for ensuring the school psychological services delivered comply with TBHEC standards. *22 TAC 465.38 (e)(3)*

Compliance with Applicable Education Laws

School psychologists shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

1. Texas Education Code;
2. Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g;
3. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq.;

4. Texas Public Information Act, Texas Government Code, Chapter 552;

5. Section 504 of the Rehabilitation Act of 1973; and

6. Americans with Disabilities Act (ADA) 42 U.S.C. 12101.

22 TAC 465.38(f)

School Chaplains

A district may employ or accept as a volunteer a chaplain to provide support, services, and programs for students as assigned by the board. A chaplain employed or volunteering is not required to be certified by SBEC.

A district that employs or accepts as a volunteer a chaplain shall ensure that the chaplain complies with the applicable requirements under Education Code Chapter 22, Subchapter C, before the chaplain begins employment or volunteering at the district.

A district may not employ or accept as a volunteer a chaplain who has been convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Code of Criminal Procedure Chapter 62.

Education Code 23.001

Literacy and Math Plans

The board shall adopt and post on the district's website early childhood literacy and mathematics proficiency plans that set specific annual goals for the following five school years to reach quantifiable goals for student performance in reading and mathematics at each campus.

Each plan must:

1. Identify annual goals for students in each group evaluated under the closing the gaps domain under Education Code 39.053(c)(3) [see AIA];
2. Include annual goals for aggregate student growth on the third grade reading or mathematics assessment instrument, as applicable, administered under Education Code 39.023 [see EKB] or on an alternative assessment instrument determined by the board;
3. Provide for targeted professional development for classroom teachers in kindergarten or first, second, or third grade who are assigned to campuses that the board identifies as not meeting the plan's goals;
4. Assign at least one district-level administrator or employee of the regional education service center (ESC) for the district's region to:
    a. Coordinate implementation of the plan; and
    b. Submit an annual report to the board on the district's progress toward the goals set under the plan; and
5. Be reviewed annually by the board at a public meeting.

Each plan may set separate goals for students in a bilingual education or special language program under Education Code Chapter 29, Subchapter B.

Professional Development

The professional development provided to classroom teachers under item 3, above, must, as appropriate, consider the unique needs of students in a bilingual education or special language program under Education Code Chapter 29, Subchapter B.

Website Posting

A district shall post the annual report described above on the district's website and on the website, if any, of each campus in the district.

Education Code 11.185

[See AIB for annual report requirements.]

College, Career, and Military Readiness Plans

The board shall adopt college, career, and military readiness plans that set specific annual goals for the following five school years to reach quantifiable goals for measures of student college, career, and military readiness at each campus.

Each plan must:

1. Identify annual goals for students in each group evaluated under the closing the gaps domain [see AIA];
2. Include an annual goal for aggregate student growth on each college, career, and military readiness indicator evaluated under the student achievement domain [see AIA];
3. Assign at least one district-level administrator or employee of the regional ESC for the district's region to:
    a. Coordinate implementation of the plan; and
    b. Submit an annual report to the board, the Texas Education Agency (TEA), and the Legislative Budget Board on the district's performance and progress toward the goals set under the plan; and
4. Be reviewed and approved by majority vote annually by the board at a public meeting.

In identifying and including goals in each plan, the board shall use longitudinal student outcome data posted under Education Code 7.0405(a) and any other resources available to the board.

Education Code 11.186

Website Posting

A district shall post the annual report described above on the district's website and on the website, if any, of each campus in the district not later than two weeks before the date of the public meeting at which the report is reviewed and approved. The district shall update the annual report on each website if any modifications are made to the report by the board. *Education Code 11.186(d)*

[See AIB for annual report requirements.]

Disclosure of Instructional Plan

The district shall adopt a policy to make available on the district's internet website at the beginning of each semester an instructional plan or course syllabus for each class offered in the district for that semester.

The policy must:

1. Require each teacher to provide before the beginning of each semester a copy of the teacher's instructional plan or course syllabus for each class for which the teacher provides instruction to district administration and the parent of each student enrolled in the class; and

2. Provide for additional copies of an instructional plan or course syllabus to be made available to a parent of a student enrolled in the class on the parent's request.

Education Code 26.0062

Instructional Plan and Course Syllabus

Prior to the beginning of each semester, each teacher shall provide a copy of the teacher's instructional plan or course syllabus for each class for which the teacher provides instruction.

The teacher shall provide this information to the District administration and the parent of each student enrolled in the teacher's class. Additional copies of the instructional plan or course syllabus shall be made available to a parent of a student enrolled upon that parent's request.

District Website

The Superintendent shall develop administrative procedures for the posting of the instructional plans and course syllabi for each class offered in the District on the District's website.

Note: For provisions regarding inventory and requisition of instructional materials, including the annual certification, see CMD.

Definitions

"Instructional material" is defined as content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student.

The term includes:

1. Material used by a teacher, including a lesson plan, answer key, grading rubric, or unit plan;
2. Material used by a principal or campus instructional leader to support instruction; and
3. Material used by a student, including a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, online services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open education resource instructional material.

Education Code 31.002(1-a)

"Open education resource (OER) instructional material" is teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that allows for free use, reuse, modification, and sharing with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge. *Education Code 31.002(1-b)*

"Technological equipment" is hardware, a device, or equipment necessary for instructional use in the classroom, including to gain access to or enhance the use of electronic instructional materials; or professional use by a classroom teacher. *Education Code 31.002(4)*

State Materials Selection and Assistance

The State Board of Education (SBOE) shall review instructional materials provided to the board by the Texas Education Agency (TEA) under Education Code 31.023. Before approving instructional material, the SBOE may review the material and must determine that the material is free from factual error and suitable for the subject and grade level for which the material is designed, and, if

	the material is intended to cover the foundational skills reading curriculum in kindergarten through third grade, does not include three-cueing, as defined by Education Code 28.0062(a-1). The SBOE shall add each approved material to a list of approved instructional materials and may add a material not approved to a list of rejected instructional materials. *Education Code 31.022(a)*
TEA Website	TEA shall develop and maintain an instructional material website to assist districts in locating and selecting instructional material. *Education Code 31.025(a)*
TEA Support	On request of a district, TEA shall provide the district assistance in evaluating, adopting, or using instructional materials. Except as otherwise provided, TEA may not require a district to adopt or otherwise use instructional material reviewed by TEA or included on the list of approved instructional materials maintained by the SBOE. *Education Code 31.0251*
OER Instructional Material	Except as provided by Education Code 31.0721(b), OER instructional material may not be made available to students, teachers, educators, or other education professionals before being reviewed by TEA and included on the list of approved instructional materials maintained by the SBOE. *Education Code 31.0721(a)* Except as otherwise provided by the Education Code, the commissioner may not require a district to adopt or use an OER instructional material. A district may adopt OER material at any time. A district may not be charged for a cost associated with the selection of an OER, except for the cost of printing copies of the material. *Education Code 31.073*
Local Instructional Materials Selection	A board shall select instructional materials in an open meeting as required by the Texas Open Meetings Act, including public notice. *19 TAC 66.104(a)*
Special Education	Adopted instructional materials shall be supplied to a student in special education classes as appropriate to the level of the student's ability and without regard to the grade for which the instructional material is adopted or the grade in which the student is enrolled. *19 TAC 66.104(c)*
Criminal Offense	A board member, administrator, or teacher commits an offense if the person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated.

A board member, administrator, or teacher commits an offense if the person accepts a gift, favor, or service that:

1. Is given to the person or the person's school;
2. Might reasonably tend to influence the person in the selection of instructional material or technological equipment; and
3. Could not be lawfully purchased with state instructional materials funds.

"Gift, favor, or service" does not include:

1. Staff development, in-service, or teacher training; or
2. Ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

Education Code 31.152

Human Sexuality Materials

Course materials relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS) shall be selected by a board with the advice of the local school health advisory council (SHAC). *Education Code 28.004(e)*

[For more information on the requirements for adopting human sexuality instructional materials, see EHAA.]

Instructional Material Review

Instructional materials selected for use in the public schools shall be furnished without cost to students attending those schools. Except as provided by Education Code 31.104(d), a district may not charge a student for instructional material or technological equipment purchased by the district with the district's technology and instructional materials allotment [see CMD]. *Education Code 31.001*

Parental Access

A parent is entitled to:

1. Review all teaching materials, instructional materials, including while the child is participating in virtual or remote learning, and other teaching aids used in the classroom of the parent's child;
2. Review each test administered to the child after the test is administered; and
3. Observe virtual instruction while the parent's child is participating in virtual or remote learning to the same extent the parent would be entitled to observe in-person instruction of the child.

A district shall make tests readily available for review by parents in person and teaching materials readily available for review by parents both in person and, if applicable, through an instructional materials portal established under Education Code 31.154 [see CMD].

The district may specify reasonable hours for in-person review. A district may not deny a parent access to an instructional materials parent portal.

Notice of Entitlement to Review Materials

The district shall post on the home page of the district's or school's internet website a notice stating that a parent of a student enrolled in the district or school is entitled to review these materials and may request that the district or school make the materials available for review as provided below. [See CQA(LEGAL)]

Review Period

In providing access to instructional materials to a student's parent under this provision, the district shall allow access beginning not later than 30 days before the school year begins and concluding not earlier than 30 days after the school year ends.

For the entire period, the district shall include access to all instructional materials that pertain to each subject area in the grade level in which the student is enrolled, except for tests or exams that have not yet been administered to the student and the student's graded assignments.

Taking Home Materials

A student's parent is entitled to request that a district allow the student to take home any instructional materials used by the student. Subject to the availability of the instructional materials, a district or school shall honor the request. A student who takes home instructional materials must return the instructional materials to school at the beginning of the next school day if requested to do so by the student's teacher.

Students Without Reliable Access to Technology

A district must provide the instructional materials to the student in printed format if the student does not have reliable access to technology at the student's home. This requirement does not require a district to purchase printed copies of instructional materials that the district would not otherwise purchase. A district may comply with this requirement by providing the student a printout of the relevant electronic instructional materials.

Learning Management System or Online Portal

A district that uses a learning management system or any online learning portal to assign, distribute, present, or make available instructional materials as defined by Education Code 31.002 [see EFA] to students shall provide login credentials to the system or portal to each student's parent.

Education Code 26.006

Parent Request for Instructional Material Review

The board shall establish a process by which a parent of a student, as indicated on the student registration form at the student's campus, may request an instructional material review under Education Code 31.0252 [see below] for a subject area in the grade level in which the student is enrolled.

Process

The process:

1. May not require more than one parent of a student to make the request;
2. Must provide for the board to determine if the request will be granted, either originally or through an appeal process;
3. May permit the requesting parent to review the instructional material directly before the district conducts an instructional material review;
4. Must establish minimum requirements for a parent's petition to the board for a local review of classroom instructional materials, including submission guidelines and timelines for the petition. The process must align to the statewide submission window of September 1 through the last instructional day for students. The process must require that the board consider such petitions at the regular board meeting that allows proper posting immediately following submission of the petition provided that it is submitted by the prescribed submission deadline;
5. Require parent petitions to include the student assignment, grade level, content area, campus name, and teacher name to complete the local review process; and
6. Establish an appeal process for parents if a petition for a local review is denied by the board, detailing steps for submitting an appeal, the criteria for reviewing the appeal, and the timelines for a final decision.

SBOE Notification

A district is requested to notify the SBOE member(s) representing the district, at the member's state email address as listed on the SBOE.Texas.gov website within one week of a decision to approve a parent request for local classroom review and one week after receiving the final report.

Limit on Reviews

The board is not required to conduct a review for a specific subject area or grade level at a specific district campus more than once per school year.

Parental Access During Review

Parental access to instructional material provided by an instructional material review conducted under this provision is in addition

to any other right to access instructional material granted by the Education Code or school district policy.

Mandatory Review on Petition by Group of Parents

If the parents of at least 25 percent of the students enrolled at a campus present to the board in which the campus is located a petition for the board to conduct an instructional material review under Education Code 31.0252, the board shall conduct the review, unless the petition is presented by the parents of less than 50 percent of the students enrolled at the campus and, by a majority vote, the board denies the request. A review shall include a review of instructional materials for each subject area or grade level specified in the petition.

Education Code 26.0061; 19 TAC 67.69

TEA shall develop standards that a district may use to conduct a review of instructional materials used by a classroom teacher in a foundation curriculum course to determine the degree in which the material corresponds with the instructional materials adopted by the district and meets the level of rigor of the essential knowledge and skills for the grade level in which it is being used. *Education Code 31.0252*

Harmful Materials

"Harmful material" means material whose dominant theme taken as a whole:

1. Appeals to the prurient interest of a minor, in sex, nudity, or excretion;
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
3. Is utterly without redeeming social value for minors.

Penal Code 43.24(a)

Obscene

"Obscene" means material or a performance:

1. The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
2. Depicts or describes
    a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
    b. Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism,

lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

3. Taken as a whole, lacks serious literary, artistic, political, and scientific value.

Penal Code 43.21(1)

Federally Required Parental Inspection

All instructional materials, including teacher's manuals, films, tapes, or other supplementary material, that will be used in connection with any survey, analysis, or evaluation as part of any program funded in whole or in part by the United States Department of Education shall be available for inspection by the parents or guardians of the children. *20 U.S.C. 1232h(a)* [For more information about the Protection of Pupil Rights Amendment (PPRA), see FA.]

Note: For information related to the accounting of instructional materials, as this term is defined by state law and rule, see CMD.

For information related to the selection process of library materials, see EFB.

The District shall provide instructional materials designed to teach the Texas Essential Knowledge and Skills and further the District's educational mission. Although the Superintendent shall ensure that professional staff select instructional materials in accordance with District policy and administrative regulations, the ultimate authority for determining and approving the curriculum and instructional program of the District lies with the Board.

Objectives

In this policy, "instructional materials" may include textbooks, supplementary resources for classroom use, and any other instructional resources, including electronic resources, used for formal or informal teaching and learning purposes. The primary objectives of instructional materials are to implement, enrich, and support the District's educational program.

Selection

Instructional materials that are textbooks and related supplemental materials, which may include items from the list of resources adopted by the State Board of Education, shall be chosen in accordance with administrative regulations and the objectives above.

The Board shall rely on District professional staff to select and acquire instructional materials that:

1. Enrich and support the curriculum consistent with the general educational goals of the state and District, the aims and objectives of individual schools and specific courses, and the District and campus improvement plans.
2. Are appropriate for the subject area and for the age, ability level, learning styles, interests, and social and emotional development of the students for whom they are selected.
3. Meet high standards for artistic quality, literary style, authenticity, educational significance, factual content, physical format, presentation, readability, and technical quality.
4. Present various sides of controversial issues so that students have an opportunity to develop, under guidance, skills in critical analysis and in making informed judgments in their daily lives. [See also EMB regarding instruction about controversial issues.]
5. Promote literacy.

District professional staff may select additional instructional materials in accordance with administrative regulations and the criteria above.

Administrators, teachers, other District personnel, parents, and community members, as appropriate, may recommend instructional materials for selection. Gifts of instructional materials shall be evaluated according to these criteria and accepted or rejected in accordance with CDC(LOCAL).

Selection of instructional materials is an ongoing process that includes the removal of materials no longer appropriate and the periodic replacement or repair of materials that still have educational value.

Parent Request for Instructional Material Review

The Superintendent shall develop administrative regulations to ensure compliance with state law and rules that a parent or guardian of a District student may request an instructional materials review for a subject area in the grade level in which their student is enrolled on the basis of the following:

1. The material is not aligned with District-adopted materials; or
2. The material does not have the appropriate rigor for the grade level for the subject area in which the instructional material is used.

The regulations shall also address procedures for submitting a parent petition to review instructional materials, the appeal process if a petition for review is denied, criteria for reviewing any appeal, and timelines for each step in the process.

Reconsideration of Instructional Materials

A District employee or a parent or guardian of a District student may request reconsideration of instructional material used in the District's educational program on the basis that the instructional material fails to meet the standards set forth in this policy.

Guiding Principles

The following principles shall guide the Board and staff in responding to a request for reconsideration of instructional materials:

1. A complainant may raise an objection to an instructional material used in a school's educational program, despite the fact that the professional staff selecting the materials were qualified to make the selection, followed the proper procedure, and adhered to the objectives for instructional materials set out in this policy.
2. A parent's ability to exercise control over instruction extends only to his or her own child as set forth in Education Code Chapter 26.

3. Access to a challenged material shall not be restricted during the reconsideration process, except the District may deny access to a child if requested by the child's parent.

The major criterion for the final decision on challenged instructional materials is the appropriateness of the material for its intended educational use. No challenged instructional material shall be removed solely because of the ideas expressed therein.

Informal Reconsideration

When the District or a campus receives an objection to the appropriateness of an instructional material, the appropriate administrator shall try to resolve the matter informally. The administrator shall explain the selection process and discuss the intended educational purpose for the instructional material. If appropriate, the administrator may offer a concerned parent an alternative instructional material to be used by that parent's child in place of the challenged material.

If the complainant wishes to make a formal challenge, the administrator shall provide the complainant a copy of this policy and a form to request a formal reconsideration of the instructional material.

Formal Request for Reconsideration

A complainant shall make any formal request to reconsider an instructional material on the form provided by the District and shall submit the completed and signed form to the principal. Upon receipt of the form, the principal shall appoint a reconsideration committee.

The reconsideration committee shall include at least one member of the instructional staff who has experience using the challenged material with students or is familiar with the challenged material's content. Other members of the committee may include District-level staff, secondary-level students, parents, and any other appropriate individuals.

All members of the committee shall review the challenged instructional material in its entirety. As soon as reasonably possible, the committee shall meet and determine whether the challenged material conforms to the principles of selection set out in this policy and whether the challenged material will continue to be used in the educational program. The committee shall prepare a written report of its findings. The Superintendent, other appropriate administrators, and the complainant shall receive copies of the report.

Frequency of Review

After an instructional material has been reviewed through formal reconsideration, it shall not be reviewed again until it is evaluated in the periodic local selection process.

Appeal	The complainant may appeal the decision of the reconsideration committee in accordance with appropriate complaint policies, starting at the appropriate level. [See DGBA, FNG, and GF]

Standards

The *School Library Programs: Standards and Guidelines for Texas* are adopted by the Texas State Library and Archives Commission. The standards and guidelines are applicable to local Texas school districts. *13 TAC 4.1*

A district shall consider the standards in developing, implementing, or expanding library services. *Education Code 33.021(b)*

Collection Development

A district shall adhere to the standards for school library collection development in developing or implementing the district's library collection development policies. *Education Code 33.021(c)*

Library Material Definitions

"Harmful material" means material whose dominant theme taken as a whole:

Harmful Material

1. Appeals to the prurient interest of a minor, in sex, nudity, or excretion;
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
3. Is utterly without redeeming social value for minors.

Education Code 33.020(1); Penal Code 43.24(a)

Indecent Content

"Indecent content" means content that portrays sexual or excretory organs or activities in a way that is patently offensive. *Education Code 33.020(2)*

Library Material

"Library material" means any book, record, file, or other instrument or document in a district's library catalog. The term does not include instructional material, as defined by Education Code 31.002 [see EFA], or materials procured for the TexShare consortium under Subchapter M, Chapter 4, Government Code. *Education Code 33.020(3)*

Obscene

"Obscene" means material or a performance:

1. The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
2. Depicts or describes:
    a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
    b. Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism,

lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

3. Taken as a whole, lacks serious literary, artistic, political, and scientific value.

Penal Code 43.21(a)(1); Miller v. California, 413 U.S. 15 (1973)

Patently Offensive

"Patently offensive" means so offensive on its face as to affront current community standards of decency. *Penal Code 43.21(a)(4)*

Profane Content

"Profane content" means content that includes grossly offensive language that is considered a public nuisance. *Education Code 33.020(4)*

Library Collection Development Standards

A district must approve and institute a collection development policy that describes the processes and standards by which a school library acquires, maintains, and withdraws materials.

A school library collection should include materials that are age appropriate and suitable to the campus and students it serves and include a range of materials. A school library collection should:

1. Enrich and support the Texas Essential Knowledge and Skills (TEKS) and curriculum established by Education Code 28.002 [see EHAA], while taking into consideration students' varied interests, maturity levels, abilities, and learning styles;

2. Foster growth in factual knowledge, literary appreciation, aesthetic values, and societal standards;

3. Encourage the enjoyment of reading, foster high-level thinking skills, support personal learning, and encourage discussion based on rational analysis; and

4. Represent the ethnic, religious, and cultural groups of the state and their contribution to Texas, the nation, and the world.

13 TAC 4.2(a)-(b)

Responsibility

A district is responsible for ensuring its school libraries implement and adhere to these collection development standards. *13 TAC 4.2(j)*

A district should ensure a professional librarian certified by the State Board for Educator Certification or other dedicated professional library staff trained on proper collection development stan-

dards is responsible for the selection and acquisition of library materials. *13 TAC 4.2(f)*

Procedures

A district must develop collection assessment and evaluation procedures to periodically appraise the quality of library materials in the school library to ensure the library's goals, objectives, and information needs are serving its school community and should stipulate the means to weed or update the collection. *13 TAC 4.2(g)*

A district may adopt local policies and procedures in addition to the standards adopted under Education Code 33.021(c) that do not conflict with the adopted standards or other requirements of the Education Code. *Education Code 33.021(e)*

Policy Requirements

A school library collection development policy must:

1. Describe the purpose and collection development goals;
2. Designate the responsibility for collection development;
3. Establish procedures for the evaluation, selection, acquisition, reconsideration, and deselection of materials;
4. Consider the distinct age groups, grade levels, and possible access to materials by all students within a campus;
5. Include a process to determine and administer student access to material rated by library material vendors as "sexually relevant" as defined by Education Code 35.001 consistent with any policies adopted by the Texas Education Agency (TEA) and local school board requirements; *[This regulation is inoperable; see Book People, Inc. v. Wong, 91 F.4th 318 (5th Cir. 2024).]*
6. Include an access plan that, at a minimum, allows efficient parental access to the district's library and online library catalog; and
7. Comply with all applicable local, state, and federal laws and regulations. Specifically, a collection development policy must:
    a. Recognize that parents are the primary decision makers regarding their student's access to library material;
    b. Prohibit the possession, acquisition, and purchase of harmful material, library material rated sexually explicit material by the selling library material vendor under Education Code 35.002 *[inoperable; see Book People, Inc. v. Wong, 91 F.4th 318 (5th Cir. 2024)]*, library material that is pervasively vulgar or educationally unsuitable as

referenced in *Bd. of Educ. V. Pico*, 457 U.S. 853 (1982), library material containing indecent content or profane content, or library material that refers a person to an internet website containing content prohibited under this provision, including by use of a link or QR code, as defined by Health and Safety Code 443.001;

c. Recognize that obscene content is not protected by the First Amendment to the United States Constitution;

d. Be required for all library materials available for use or display, including material contained in school libraries, classroom libraries, online catalogs, library mobile applications, and any other library catalog a student may access;

e. Ensure schools provide library catalog transparency, including, but not limited to:

(1) Online catalogs that are publicly available; and

(2) Information about titles and how and where material can be accessed;

f. Recommend schools communicate effectively with parents regarding collection development, including, but not limited to:

(1) Access to district/campus policies relating to school libraries;

(2) Consistent access to library resources; and

(3) Opportunities for students, parents, educators, and community members to provide feedback on library materials and services;

g. Prohibit the removal of material based solely on the ideas contained in the material or the personal background of the author of the material or characters in the material; and

h. Demonstrate a commitment to compliance with the Children's Internet Protection Act (Pub. L. No. 106-554) including through the use of technology protection measures, as defined by the Act.

13 TAC 4.2(c); Education Code 33.021(d)(2)

Findings of Fact "Educationally unsuitable" is a finding of fact based on many factors. Given the number of possible factors, a finding of fact must include reasoning for a library material being unsuitable or suitable.

The determination must be consistent with the First Amendment to the U.S. Constitution. *Parent v. Lovejoy, No. 073-R10-08-2024 (Tex. Comm'r of Educ. April 29, 2025)*

"Pervasively vulgar" requires a finding of fact that vulgarity is present and referenced throughout a library material. Since "pervasive" means existing in or spreading through every part, a determination that a library material is "pervasively vulgar" requires a review of the whole book. The determination must be consistent with the First Amendment to the U.S. Constitution. *Parent v. Lovejoy, No. 073-R10-08-2024 (Tex. Comm'r of Educ. April 29, 2025)*

Evaluation of Materials

Evaluation of materials as referenced in this provision includes a consideration of the factors described at 13 Administrative Code 4.2(b), consideration of local priorities and district standards, and at least two of the following:

1. Consideration of recommendations from parents, guardians, and local community members;
2. Consultation with the district's educators and library staff and/or consultation with library staff of similarly situated districts and their collections and collection development policies;
3. An extensive review of the text of item;
4. The context of a work, including consideration of the contextual characteristics, overall fit within existing school library collection, and potential support of the school curriculum; or
5. Consideration of authoritative reviews of the items from sources such as professional journals in library science, recognized professional education or content journals with book reviews, national and state award recognition lists, library science field experts, and highly acclaimed author and literacy expert recommendations.

13 TAC 4.2(d)

Acquisition of Library Materials

Policy Requirements

The board of a district shall adopt a policy for the acquisition of library materials, including procedures for the procurement of library materials and the receipt of donated library materials. The policy must require the board to:

1. Approve all library materials that have been donated to or that are to be procured by a school library in the district, with the advice and recommendations of the district's local school library advisory council (SLAC) if the district established a SLAC;

2. Make the list of library materials not including those library materials to which this provision does not apply that have been donated to or that are proposed to be procured by a school library accessible for review by the public for at least 30 days before final approval;

3. Approve or reject the list of library materials that have been donated to or that are proposed to be procured by a school library in an open meeting; and

4. Ensure compliance with the library standards approved under Education Code 33.021.

Education Code 33.026(a)

These provisions do not apply to library materials that have been donated to or that are to be procured by a school library that:

1. Replace a damaged copy of a library material with the same International Standard Book Number (ISBN) that is currently in the school library catalog;

2. Are additional copies of a library material with the same ISBN that is currently in the school library catalog; or

3. Have the same ISBN and have been approved for the same grade levels by the board of the district from a previous proposed list of library materials.

Education Code 33.026(f)

Board Review and Meeting

Each member of the board of a district is entitled to review each list of library materials that have been donated to or that are proposed to be procured by a school library in the district and propose changes to each list described by 33.026(a)(1) before the board votes to approve or reject the list.

The board shall approve or reject a list of library materials that have been donated to or that are proposed to be procured by a school library at the first open meeting of the board held on or after the 30th day after the date the list is made accessible for review by the public.

Education Code 33.026(b-c)

A district may not add a donated library material to the school library catalog or otherwise make the donated library material available for student use unless the board of the district approves the addition of that donated library material to the school library catalog for the grade levels for which the material is intended. *Education Code 33.026(e)*

School Library Advisory Council Recommendation

If a district established a local SLAC, the SLAC shall meet to determine the SLAC's recommendations regarding library materials that have been donated to or that are proposed to be procured by a school library before the date of the open meeting of the board. The local SLAC meeting may occur during the period the list is available for review by the public. *Education Code 33.026(d)*

Policy Review

A district's collection development policy should be reviewed at least every three years and updated as necessary. *13 TAC 4.2(h)*

Instruction in TEKS

Nothing in Education Code Chapter 33, Subchapter B may be construed as limiting the acquisition of instructional material necessary for the teaching of, instruction in, or demonstration of knowledge of the essential knowledge and skills adopted under Education Code 28.002. *Education Code 33.0205*

Parental Access

A district shall adopt procedures that provide for a parent of a child enrolled in the district or school to access the catalog of available library materials at each school library in the district or school and submit to the district or school a list of library materials that the parent's child may not be allowed to check out or otherwise access for use outside of the school library. The procedures must allow for a parent to submit the list of library materials through an electronic physical form or the district's online library catalog system.

A district may not allow a student to check out or otherwise use outside the school library a library material the student's parent has included in the list submitted by the parent.

Education Code 33.023

[See CMD(LEGAL) for information regarding funds that may be used to comply with this provision.]

Record of Student Library Use

A district that uses a learning management system or an online learning portal shall, through the system or portal, provide to each parent of a child enrolled in the district or school a record of each time the parent's child checks out or otherwise uses outside the school library a library material. The record must include, as applicable, the title, author, genre, and return date of the library material. [See also FL(LEGAL) for provisions regarding access by parents.] *Education Code 33.024*

School Library Advisory Council

Permissive Establishment

The board may establish a local SLAC to assist the district in ensuring that local community values are reflected in each school library catalog in the district. A district that does not establish a local SLAC must ensure that the district's procedures for adding or removing library materials to or from a school library catalog comply with the library standards approved under Education Code 33.021 and the meeting requirements below. *Education Code 33.025(a)*

Mandatory Establishment

The board shall establish a local SLAC if the parents of at least 10 percent of the students enrolled in the district or 50 or more parents of students enrolled in the district, whichever is fewer, present to the board a petition to establish a local SLAC. A SLAC established under this provision may not be abolished until the third anniversary of the date on which the SLAC was established. *Education Code 33.025(b)*

A district that establishes a local SLAC must consider the recommendations of the local SLAC before adding library materials to a school library catalog, removing library materials from a school library catalog following a challenge under Education Code 33.027, or making changes to policies or guidelines related to a school library catalog. *Education Code 33.025(c)*

Composition

The local SLAC must consist of at least five members, with each member appointed by the board, and with each trustee appointing an equal number of members. A majority of the voting members of the SLAC must be persons who are parents of students enrolled in the district and who are not employed by the district. One of those members shall serve as chair of the SLAC. The board may also appoint one or more persons to serve as nonvoting members of the SLAC from any of the following groups:

1. Classroom teachers employed by the district;
2. Librarians employed by the district;
3. School counselors certified under Education Code, Chapter 21, Subchapter B, employed by the district;
4. School administrators employed by the district;
5. The business community; and
6. The clergy.

Education Code 33.025(f)

Duties

The local SLAC's duties include recommending:

1. Policies and procedures for the acquisition of library materials consistent with local community values;
2. To the board whether library materials proposed for acquisition under Education Code 33.026 are appropriate for each grade level of the school or campus for which the library materials are proposed to be acquired;
3. If feasible, joint use agreements or strategies for collaboration between the district and local public libraries and community organizations;

4. The removal of any library materials that the SLAC determines to be harmful material or material containing indecent content or profane content that is inconsistent with local community values or age appropriateness;

5. The policies and procedures for processing challenges received under Education Code 33.027; and

6. The action to be taken by the district in response to a challenge received under Education Code 33.027.

Any recommendation made by the local SLAC must adhere to the library standards approved under Education Code 33.027.

Education Code 33.025(d-e)

Meetings

The local SLAC shall meet at least two times each year and at other times as necessary to fulfill the SLAC's duties. For each meeting, the SLAC shall:

1. At least 72 hours before the meeting, post notice of the date, hour, place, and subject of the meeting on a bulletin board in the central administrative office of each campus in the district and ensure that such notice is posted on the district's internet website, if the district has an internet website;

2. Prepare and maintain minutes of the meeting that state the subject and content of each deliberation and each vote, order, decision, or other action taken by the SLAC during the meeting;

3. Make an audio or video recording of the meeting; and

4. Not later than the 10th day after the date of the meeting, submit the minutes and audio or video recording of the meeting to the district.

Minutes

As soon as practicable after receipt of the minutes and audio or video recording, the district shall post the minutes and audio or video recording on the district's internet website, if the district has an internet website.

Education Code 33.025

Challenge or Appeal of Library Material

A parent of or person standing in parental relation to a student enrolled in a district, a person employed by the district, or a person residing in the district may submit:

1. To the district a written challenge to any library material in the catalog of a school library in the district using a form adopted by TEA [see below at Challenge Form]; or

2. To the district's board an appeal of an action taken by the district in response to a written challenge received.

Education Code 33.027(a)(1)-(2)

Challenge Form

TEA shall adopt and post on TEA's internet website a form to be used in making a written challenge under Education Code 33.027(a)(1). Each school district shall post the form on the district's internet website, if the district has an internet website. The form shall require the person submitting the form to identify how the challenged library material violates the library standards approved under Education Code 33.021. *Education Code 33.027(e)*

Copy of Challenge to SLAC

Not later than the fifth day after the date on which a school district receives a written challenge under Education Code 33.027(a)(1), the district shall provide a copy of the challenge to the district's local SLAC if the district established a SLAC. The SLAC shall make a recommendation for action by the district not later than the 90th day after the date on which the SLAC receives the copy. *Education Code 33.027(b)*

Library Material Review Committee

If the procedures recommended by the local SLAC, if applicable, and adopted by the board permit the appointment of library material review committees that consist of persons who are not members of the SLAC to review library materials challenged under 33.027(a)(1), the SLAC may base their recommendation for action to be taken by the district under 33.027(b) on the recommendation of a library material review committee if the committee consists of at least five persons appointed by the board, a majority of whom are parents of students enrolled in the district and are not employed by the district. The library materials review committee must follow the Meetings and Minutes procedures described above. *Education Code 33.027(c)*

Board Action on Written Challenge

The board shall take action on a written challenge submitted under Education Code 33.027(a)(1) at the first open meeting of the board held after the 90th day after the date on which the district receives a written challenge or, if applicable, the local SLAC has made a recommendation regarding the challenge.

The board shall take action on an appeal under Education Code 33.027(b) at the first open meeting of the board held after the date the appeal is filed.

Education Code 33.027(d)

In taking action on a written challenge or appeal, the board shall consider:

1. If applicable, the advice of the district's local SLAC; and

2. Whether the library material challenged or appealed is suitable for the subject and grade level for which the library material is intended, including by considering whether the library material adheres to the library standards approved under Education Code 33.021 and reviews, if any, of the library material conducted by academic experts specializing in the subject covered by the library material or in the education of students in the subject and grade level for which the library material is intended.

Education Code 33.027(f)

Access During Challenge — A district that receives a challenge to a library material under Education Code 33.027(a)(1) shall prohibit students enrolled in the district from accessing the library material until the district takes action in response to the challenge. *Education Code 33.027(g)*

Notice of Removed Material — If a challenge to a library material results in the board, with the recommendation of the local SLAC, if applicable, removing the library material from a school library catalog, the board shall notify each teacher assigned as the classroom teacher at the grade level for which the library material was determined to be not appropriate and instruct the teacher to remove any copy of the library material from the teacher's classroom library. *Education Code 33.027(h)*

Action Not Required — If a challenge to a library material results in the board, with the recommendation of the local SLAC, if applicable, not removing the library material from a school library catalog, the board is not required to take any action in response to a written challenge of the library material submitted before the second anniversary of the date of the determination to not remove the library material. *Education Code 33.027(i)*

Liability — A district or a teacher, librarian, or other staff member employed by a district is not liable for any claim or damage resulting from a library material vendor's violation of Education Code Chapter 35. *Education Code 35.004*

Joint Facilities — A district may enter into contracts with a county or municipality in which the district is located to provide joint library facilities. The board and the commissioner's court of the county or governing body of the municipality must conduct public hearings before entering into such a contract. The hearings may be held jointly. *Education Code 33.022*

Request for Program

If the parents or guardians of at least 22 students at a school request a transfer for the same school year to another school in the district for the purpose of enrolling in an educational program offered at that school, the district shall offer such a program, beginning with the following school year, at the school from which the transfers were requested. The program may be offered by teleconference.

"Educational program" means a course or series of courses in the required curriculum other than a fine arts course or a career and technology course.

Education Code 28.003

Parental Requests

A parent is entitled to request, with the expectation that the request will not be unreasonably denied:

1. The addition of a specific academic class in the course of study of the parent's child in keeping with the required curriculum if sufficient interest is shown in the addition of the class to make it economically practical to offer the class.
2. That the parent's child be permitted to attend a class for credit above the child's grade level, whether in the child's school or another school, unless the board or its designated representative expects that the child cannot perform satisfactorily in the class.

The decision of the board concerning such a request is final and may not be appealed. [See FNG]

Education Code 26.003(a)(3)(A)(B), (b)

Pandemic Cancellation

A district is not liable for damages or equitable monetary relief arising from a cancellation or modification of a course, program, or activity of the district if the cancellation or modification arose during a pandemic emergency and was caused, in whole or in part, by the emergency. *Civ. Prac. & Rem. Code 148.004*

Videotape or Recording

A district employee or contractor is not required to obtain the consent of a child's parent before the employee or contractor may videotape the child or record the child's voice if the videotape or recording is to be used only for a purpose related to regular classroom instruction. *Education Code 26.009(b)(3)*

Purpose

As a condition of accreditation, a district shall provide instruction in the essential knowledge and skills at appropriate grade levels in the foundation and enrichment curriculum. *Education Code 28.002(c); 19 TAC 74.1(b)*

A district shall ensure that all children in the district participate actively in a balanced curriculum designed to meet individual needs. *Education Code 28.002(g)*

Instruction may be provided in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade-level standards. *19 TAC 74.2*

A primary purpose of the public school curriculum is to prepare thoughtful, informed citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the fundamental democratic principles of our state and national heritage.

A district shall require the teaching of informed American patriotism, Texas history, and the free enterprise system in the adoption of instructional materials for kindergarten through grade 12, including the founding documents of the United States. In providing instruction required by the State Board of Education (SBOE) under Education Code 28.002(h-1), regarding the founding documents of the United States, a district shall use those documents as part of the instructional materials for the instruction.

Education Code 28.002(h), (h-6)

Required Curriculum

Foundation Curriculum

A district that offers kindergarten through grade 12 shall offer a foundation curriculum that includes:

1. English language arts and reading;
2. Mathematics;
3. Science; and
4. Social studies, consisting of Texas, United States, and world history; government; geography; and economics with emphasis on the free enterprise system and its benefits.

Education Code 28.002(a)(1); 19 TAC 74.1(a)(1)

Enrichment Curriculum

A district that offers kindergarten through grade 12 shall offer an enrichment curriculum that includes:

1. Languages other than English, to the extent possible. American Sign Language is a language for these purposes and the district may offer an elective course in the language;
2. Health, with emphasis on:
    a. Physical health, including the importance of proper nutrition and exercise;
    b. Mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making; and
    c. Suicide prevention, including recognizing suicide-related risk factors and warning signs;
3. Physical education;
4. Fine arts;
5. Career and technical education;
6. Technology applications;
7. Religious literature, including the Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature; and
8. Personal financial literacy.

Education Code 28.002(a)(2), (e); 19 TAC 74.1(a)(2)

Digital Citizenship

The SBOE by rule shall require each district to incorporate instruction in digital citizenship into the district's curriculum, including information regarding the potential criminal consequences of cyberbullying.

"Cyberbullying" has the meaning assigned by Education Code 37.0832. [See FFI]

"Digital citizenship" means the standards of appropriate, responsible, and healthy online behavior, including the ability to access, analyze, evaluate, create, and act on all forms of digital communication.

Education Code 28.002(z)

Positive Character Traits

Districts are required to provide instruction in the essential knowledge and skills for positive character traits and personal skills at least once in the following grade bands: kindergarten-grade 2, grades 3-5, grades 6-8, and grades 9-12.

Districts may provide the required instruction in a variety of arrangements, including through a stand-alone course or by integrating the positive character traits standards in the essential knowledge and skills for one or more courses or subject areas at the appropriate grade levels.

19 TAC 120.3(a), .5(a), .7(a), .9(a)

Local Credit

A district may offer courses for local credit, at its discretion, in addition to those in the required curriculum, but it may not delete or omit instruction in the foundation and enrichment curricula specified above. *Education Code 28.002(f); 19 TAC 74.1(b)*

Local Instructional Plan

A district's local instructional plan may draw on state curriculum frameworks and program standards as appropriate. A district is encouraged to exceed minimum requirements of law and SBOE rule.

Major Curriculum Initiatives

Before the adoption of a major curriculum initiative, including the use of a curriculum management system, a district must use a process that:

1. Includes teacher input;
2. Provides district employees with the opportunity to express opinions regarding the initiative; and
3. Includes a meeting of the board at which information regarding the initiative is presented, including the cost of the initiative and any alternatives that were considered; and members of the public and district employees are given the opportunity to comment regarding the initiative.

Education Code 28.002(g)

Common Core State Standards

A district may not use common core state standards to comply with the requirement to provide instruction in the essential knowledge and skills at appropriate grade levels. A district may not be required to offer any aspect of a common core state standards curriculum. "Common core state standards" means the national curriculum standards developed by the Common Core State Standards Initiative. *Education Code 28.002(b-1), (b-3), (b-4)*

Scope and Sequence and Instructional Materials

In adopting a recommended or designated scope and sequence or instructional materials for a subject in the required curriculum under Education Code 28.002(a) in a particular grade level, a district shall ensure sufficient time is provided for teachers to teach and students to learn the essential knowledge and skills for that subject and grade level [see DG]. *Education Code 28.0027(a)*

[See EEP(LEGAL) for information related to requirements to provide copies of a teacher's instructional plan or syllabus for each

class to district administration and the parent of each student in the class.]

Coordinated Health Programs

The Texas Education Agency (TEA) shall make available to each district one or more coordinated health programs in elementary, middle, and junior high school. Each program must provide for coordinating education and services related to:

1. Physical health education, including programs designed to prevent obesity, cardiovascular disease, oral diseases, and Type 2 diabetes and programs designed to promote the role of proper nutrition;
2. Mental health education, including education about mental health conditions, mental health well-being, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making;
3. Substance abuse education, including education about alcohol abuse, prescription drug abuse, and abuse of other controlled substances;
4. Physical education and physical activity; and
5. Parental involvement.

Education Code 38.013; 19 TAC 102.1031(a)

A district shall participate in appropriate training to implement TEA's coordinated health program and shall implement the program in each elementary, middle, and junior high school in the district. *Education Code 38.014*

Coordinated school health programs that are developed by districts and that meet TEA criteria may be approved and made available as approved programs. Districts must use materials that are proven effective, such as TEA-approved textbooks or materials developed by nationally recognized and/or government-approved entities. *19 TAC 102.1031(c)*

Physical Education

Each district shall establish specific objectives and goals the district intends to accomplish through the physical education curriculum. The physical education curriculum must be sequential, developmentally appropriate, and designed, implemented, and evaluated to enable students to develop the motor, self-management, and other skills, knowledge, attitudes, and confidence necessary to participate in physical activity throughout life.

A physical education course shall:

1. Offer students an opportunity to choose among many types of physical activity in which to participate;

2. Offer students both cooperative and competitive games; and

3. Be an enjoyable experience for students.

On a weekly basis, at least 50 percent of a physical education class shall be used for actual student physical activity and the activity shall be, to the extent practicable, at a moderate or vigorous level.

Student/Teacher Ratio

The objectives and goals shall include, to the extent practicable, student/teacher ratios [see EEB] that are small enough to enable the district to:

1. Carry out the purposes of and requirements for the physical education curriculum; and

2. Ensure the safety of students participating in physical education.

If a district establishes a student to teacher ratio greater than 45 to 1 in a physical education class, the district shall specifically identify the manner in which the safety of the students will be maintained.

Education Code 25.114, 28.002(d); 19 TAC 74.37

Classification for Physical Education

A district shall classify students for physical education on the basis of health into one of the following categories:

1. Unrestricted — not limited in activities.

2. Restricted — excludes the more vigorous activities. Restricted classification is of two types:

    a. Permanent — A member of the healing arts licensed to practice in Texas shall provide written documentation to the school as to the nature of the impairment and the expectations for physical activity for the student.

    b. Temporary — Students may be restricted from physical activity of the physical education class. A member of the healing arts licensed to practice in Texas shall provide written documentation to the school as to the nature of the temporary impairment and the expected amount of time for recovery. During recovery time, the student shall continue to learn the concepts of the lessons but shall not actively participate in the skill demonstration.

3. Adapted and remedial — specific activities prescribed or prohibited for students as directed by a member of the healing arts licensed to practice in Texas.

19 TAC 74.31

School Health Advisory Council

A board shall establish a local school health advisory council (SHAC) to assist the district in ensuring that local community values are reflected in the district's health education instruction. *Education Code 28.004(a)* [See BDF regarding composition of the SHAC and FFA regarding federal wellness requirements.]

Duties

The SHAC's duties include recommending:

1. The number of hours of instruction to be provided in:
    a. Health education in kindergarten through grade 8; and
    b. If the district requires health education for high school graduation, health education, including physical health education and mental health education, in grades 9 through 12.
2. Policies, procedures, strategies, and curriculum appropriate for specific grade levels designed to prevent physical health concerns, including obesity, cardiovascular disease, Type 2 diabetes, and mental health concerns, including suicide, through coordination of:
    a. Health education, which must address physical health concerns and mental health concerns to ensure the integration of physical health education and mental health education;
    b. Physical education and physical activity;
    c. Nutrition services;
    d. Parental involvement;
    e. Instruction on substance abuse prevention;
    f. School health services, including mental health services;
    g. A comprehensive school counseling program under Education Code 33.005 [see FFEA];
    h. A safe and healthy school environment; and
    i. School employee wellness;
3. Appropriate grade levels and methods of instruction for human sexuality instruction;

4. Strategies for integrating the curriculum components specified by item 2, above, with the following elements in a coordinated school health program:

    a. School health services, including physical health services and mental health services, if provided at a campus by the district or by a third party under a contract with the district;

    b. A comprehensive school counseling program under Education Code 33.005 [see FFEA];

    c. A safe and healthy school environment; and

    d. School employee wellness;

5. If feasible, joint use agreements or strategies for collaboration between the district and community organizations or agencies. Any agreement entered into based on a recommendation of the SHAC must address liability for the district and community organization;

6. Strategies to increase parental awareness regarding:

    a. Risky behaviors and early warning signs of suicide risks and behavioral health concerns, including mental health disorders and substance use disorders; and

    b. Available community programs and services that address risky behaviors, suicide risks, and behavioral health concerns.

7. Appropriate grade levels and curriculum for instruction regarding the dangers of opioids, including instruction on:

    a. Opioid addiction and abuse, including addiction to and abuse of synthetic opioids such as fentanyl; and

    b. Methods for administering an opioid antagonist; and

8. Appropriate grade levels and curriculum for instruction regarding child abuse, family violence, dating violence, and sex trafficking, including likely warning signs that a child may be at risk for sex trafficking, provided that the local SHAC's recommendations under this provision do not conflict with the essential knowledge and skills developed by the SBOE.

Education Code 28.004(c), (n)

Policy Recommendations

The SHAC shall consider and make policy recommendations to the district concerning the importance of daily recess for elementary school students. The SHAC must consider research regarding un-

structured and undirected play, academic and social development, and the health benefits of daily recess in making the recommendations. The SHAC shall ensure that local community values are reflected in any policy recommendation made to the district concerning the importance of daily recess for elementary school students. *Education Code 28.004(l)*

The SHAC shall make policy recommendations to the district to increase parental awareness of suicide-related risk factors and warning signs and available community suicide prevention services. *Education Code 28.004(o)*

Complaints

A parent may use the grievance procedure at FNG concerning a complaint of a violation of Education Code 28.004*. Education Code 28.004(i-1)*

Human Sexuality Instruction

Definitions

"Human sexuality instruction," "instruction in human sexuality," and "instruction relating to human sexuality" include instruction in reproductive health.

"Curriculum materials" includes the curriculum, teacher training materials, and any other materials used in providing instruction.

Education Code 28.004(p)

Board Selection

The board shall determine the specific content of a district's instruction in human sexuality. *Education Code 28.004(h)*

The board shall select any instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS) with the advice of the SHAC. The instruction must:

1. Present abstinence as the preferred choice of behavior for unmarried persons of school age;
2. Devote more attention to abstinence than to any other behavior;
3. Emphasize that abstinence is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with HIV or AIDS, and the emotional trauma associated with adolescent sexual activity;
4. Direct adolescents to a standard of behavior in which abstinence before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with HIV or AIDS; and
5. Teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruc-

tion on contraception and condoms is included in the curriculum.

Education Code 28.004(e)

Notice to Parents

Before each school year, a district shall provide written notice to a parent of each student enrolled in the district of the board's decision regarding whether the district will provide human sexuality instruction to district students. If instruction will be provided, the notice must include:

1. A statement informing the parent of the human sexuality instruction requirements under state law;
2. A detailed description of the content of the district's human sexuality instruction and a general schedule on which the instruction will be provided;
3. A statement of the parent's right to:
    a. At the parent's discretion, review or purchase a copy of curriculum materials as provided by Education Code 28.004(j) [see EFA];
    b. Remove the student from any part of that instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and
    c. Use the grievance procedure at FNG or the appeals process under Education Code 7.057 concerning a complaint of a violation of Education Code 28.004;
4. A statement that any curriculum materials in the public domain used for the district's human sexuality instruction must be posted on the district's internet website, if the district has an internet website, and the internet website address at which the curriculum materials are located; and
5. Information describing the opportunities for parental involvement in the development of the curriculum to be used in human sexuality instruction, including information regarding the SHAC.

Education Code 28.004(i)

Parent Consent

Before a student may be provided with human sexuality instruction, a district must obtain the written consent of the student's parent. The request for written consent may not be included with any other notification or request for written consent provided to the parent, other than the notice to parents regarding human sexuality instruc-

tion described above, and must be provided to the parent not later than the 14th day before the date on which the human sexuality instruction begins. *Education Code 28.004(i-2)*

Condoms

A district may not distribute condoms in connection with instruction relating to human sexuality. *Education Code 28.004(f)*

Separate Classes

If a district provides human sexuality instruction, it may separate students according to sex for instructional purposes. *Education Code 28.004(g)* [See FB regarding single-sex classes under Title IX.]

Adoption of Instructional Materials

The board shall adopt a policy establishing a process for the adoption of curriculum materials for the district's human sexuality instruction. The policy must require:

1. The board to adopt a resolution convening the local SHAC for the purpose of making recommendations regarding the curriculum materials;

2. The local SHAC to:

    a. After the board's adoption of the resolution, hold at least two public meetings [see BDF] on the curriculum materials before adopting recommendations; and

    b. Provide the adopted recommendations to the board at a public meeting of the board; and

3. The board, after receipt of the local SHAC’s recommendations under item 2, above, to take action on the adoption of the recommendations by a record vote at a public meeting.

Before adopting curriculum materials for the district's human sexuality instruction, the board shall ensure that the curriculum materials are:

1. Based on the advice of the local SHAC;

2. Suitable for the subject and grade level for which the curriculum materials are intended; and

3. Reviewed by academic experts in the subject and grade level for which the curriculum materials are intended.

Education Code 28.004(e)-(e-1), (e-3)

Abuse Prevention Instruction

Any course materials relating to the prevention of child abuse, family violence, dating violence, and sex trafficking shall be selected by the board with the advice of the local SHAC.

Adoption of Instructional Materials

The board shall adopt a policy establishing a process for the adoption of curriculum materials for the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking. The policy must require:

1. The board to adopt a resolution convening the SHAC for the purpose of making recommendations regarding the curriculum materials;
2. The SHAC to:
    a. After the board's adoption of the resolution, hold at least two public meetings [see BDF] on the curriculum materials before adopting recommendations; and
    b. Provide the adopted recommendations to the board at a public meeting of the board; and
3. The board, after receipt of the SHAC's recommendations, to take action on the adoption of the recommendations by a record vote at a public meeting.

Board Selection

Before adopting curriculum materials for the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, the board shall ensure that the curriculum materials are:

1. Based on the advice of the local SHAC;
2. Suitable for the subject and grade level for which the curriculum materials are intended; and
3. Reviewed by academic experts in the subject and grade level for which the curriculum materials are intended.

The board shall determine the specific content of the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, including the essential knowledge and skills addressing these topics developed by the SBOE.

Education Code 28.004(q)-(q-1), (q-3)-(q-4)

Notice to Parents

Before each school year, a district shall provide written notice to a parent of each student enrolled in the district of the board's decision regarding whether the district will provide instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking to district students. If instruction will be provided. The notice must include:

1. A statement informing the parent of the requirements under state law regarding instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking;

2. A detailed description of the content of the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking;

3. A statement of the parent's right to:

   a. At the parent's discretion, review or purchase a copy of curriculum materials [see below at Availability of Instructional Materials];

   b. Remove the student from any part of the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and

   c. Use the grievance procedure at FNG or the appeals process under Education Code 7.057 concerning a complaint of a violation of Education Code 28.004;

4. A statement that any curriculum materials in the public domain used for the district's instruction regarding the prevention of child abuse, family violence, dating violence, and sex trafficking must be posted on the district's internet website address at which the curriculum materials are located; and

5. Information describing the opportunities for parental involvement in the development of the curriculum to be used in instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, including information regarding the local SHAC.

Parent Consent Before Instruction

Before a student may be provided with instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, a district must obtain the written consent of the student's parent. A request for written consent:

1. May not be included with any other notification or request for written consent provided to the parent, other than the notice described above; and

2. Must be provided to the parent not later than the 14th day before the date on which the instruction relating to the preven-

tion of child abuse, family violence, dating violence, and sex trafficking begins.

Education Code 28.004(q-5)-(q-6)

Availability of Materials for Human Sexuality Instruction and Abuse Prevention Instruction

Curriculum materials proposed to be adopted for the district's human sexuality instruction or instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking must be made available as provided below, except copyrighted materials must be provided as described by items (2)(a) or (2)(c), as applicable.

A district shall make all curriculum materials used in human sexuality instruction or instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking available by:

1. For curriculum materials in the public domain:
    a. Providing a copy of the curriculum materials by mail or email to a parent of a student enrolled in the district on the parent's request; and
    b. Posting the curriculum materials on the district's internet website, if the district has an internet website; and
2. For copyrighted curriculum materials, allowing a parent of a student enrolled in the district to:
    a. Review the curriculum materials at the student's campus at any time during regular business hours;
    b. Purchase a copy of the curriculum materials from the publisher as provided by the district's purchase agreement for the curriculum materials; or
    c. Review the curriculum materials online through a secure electronic account in a manner that prevents the curriculum materials from being copied and that otherwise complies with copyright law.

For purchase agreements entered into, amended, or renewed on or after September 1, 2021, if a district purchases from a publisher copyrighted curriculum materials for use in the district's human sexuality instruction, the district shall ensure that the purchase agreement provides for a means by which a parent of a student enrolled in the district may purchase a copy of the curriculum materials from the publisher at a price that does not exceed the price per unit paid by the district for the curriculum materials.

If a district purchases from a publisher copyrighted curriculum materials for use in the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, the district shall ensure that the purchase agreement provides for a means by which a parent of a student enrolled in the district may purchase a copy of the curriculum materials from the publisher at a price that does not exceed the price per unit paid by the district for the curriculum materials.

Education Code 28.004(e-2), (j)-(j-2), (q-2)

Character Education

A district must adopt a character education program that includes the following positive character education traits and personal skills:

1. Courage;
2. Trustworthiness, including honesty, reliability, punctuality, and loyalty;
3. Integrity;
4. Respect and courtesy;
5. Responsibility, including accountability, diligence, perseverance, self-management skills, and self-control;
6. Fairness, including justice and freedom from prejudice;
7. Caring, including kindness, empathy, compassion, consideration, patience, generosity, charity, and interpersonal skills;
8. Good citizenship, including patriotism, concern for the common good and the community, responsible decision-making skills, and respect for authority and the law;
9. School pride; and
10. Gratitude.

In developing or selecting a character education program under Education Code 29.906, a district shall consult with a committee selected by the district that consists of parents of district students, educators, and other members of the community, including community leaders.

The provisions above do not require or authorize proselytizing or indoctrinating concerning any specific religious or political belief.

Education Code 29.906

Courses in the foundation and enrichment curriculum in grades 6-12 must be provided in a manner that allows all grade promotion and high school graduation requirements to be met in a timely manner. A district is not required to offer a specific course in the foundation and enrichment curriculum except as specified in 19 Administrative Code 74.3. *19 TAC 74.3(c)*

Grades 6-8

A district that offers grades 6-8 must provide instruction in the required curriculum as specified in 19 Administrative Code 74.1, relating to essential knowledge and skills. A district must ensure that sufficient time is provided for teachers to teach and for students to learn English language arts, mathematics, science, social studies, at least one of the four disciplines in fine arts (art, dance, music, theatre), health, physical education, technology applications, and to the extent possible, languages other than English. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards. *19 TAC 74.3(a)(1)*

Physical Activity Requirements

A district shall require students in grades 6-8 to participate in moderate or vigorous daily physical activity for at least 30 minutes for at least four semesters during those grade levels as part of the district's physical education curriculum.

A district may as an alternative require a student enrolled in a grade level for which the district uses block scheduling to participate in moderate or vigorous physical activity for at least 225 minutes during each period of two school weeks.

Exemptions

A district must provide an exemption for:

1. A student who is unable to participate in the required physical activity because of illness or disability; and
2. A student who participates in an extracurricular activity with a moderate or vigorous physical activity component that is considered a structured activity and meets the requirements for extracurricular activity as defined at 19 Administrative Code 76.1001.

A district may allow an exemption for a student on a middle or junior high school campus participating in a school-related activity or an activity sponsored by a private league or club only if that activity meets each of the following requirements:

1. The activity must be structured;
2. The board must certify the activity; and

3. The student must provide proof of participation in the activity.

A "structured activity" is an activity that meets, at a minimum, each of the following requirements:

1. The activity is based on the grade appropriate movement, physical activity and health, and social development strands of the essential knowledge and skills for physical education specified in 19 Administrative Code Chapter 116; and

2. The activity is organized and monitored by school personnel or by appropriately trained instructors who are part of a program that has been certified by the board.

Education Code 28.002(l)-(l-1); 19 TAC 103.1003

Fine Arts Requirement

The school district must ensure that, beginning with students who enter grade 6 in the 2010-11 school year, each student completes one Texas Essential Knowledge and Skills-based fine arts course in grade 6, grade 7, or grade 8. *Education Code 28.002(c-1); 19 TAC 74.3(a)(2)*

A district shall offer and maintain evidence that students have the opportunity to take courses in at least three of the four disciplines in fine arts. The requirement to offer three of the four disciplines in fine arts may be reduced to two by the commissioner of education upon application of a school district with a total middle school enrollment of less than 250 students. *19 TAC 74.3(a)(3)*

Instruction in High School, College, and Career Preparation

Each district shall provide instruction to students in grade 7 or 8 in preparing for high school, college, and a career. The instruction must include information regarding:

1. The creation of a high school personal graduation plan under Education Code 28.02121;

2. The distinguished level of achievement described by Education Code 28.025(b-15);

3. Each endorsement described by Education Code 28.025(c-1);

4. College readiness standards; and

5. Potential career choices and the education needed to enter those careers.

A district may provide the instruction as part of an existing course in the required curriculum; provide the instruction as part of an existing career and technology course designated by the State Board

of Education (SBOE) as appropriate for that purpose; or establish a new elective course through which to provide the instruction.

Education Code 28.016

Middle School Advanced Math Program

A district shall develop a middle school advanced mathematics program for students in grades 6-8 to enable students to enroll in Algebra I in grade 8.

Required Local Measure

A district shall identify a local measure for use in determining student eligibility for automatic enrollment in a middle school advanced mathematics program.

Automatic Enrollment

A district shall automatically enroll in a middle school advanced mathematics program each grade 6 student whose performance was either:

1. In the 60th percentile or higher on statewide scores for the grade 5 mathematics state assessment instrument; or
2. In the top 40 percent on a local measure that includes the student's grade 5 class ranking or a demonstrated proficiency in the student's grade 5 mathematics coursework.

No Results

A local measure shall be used to determine enrollment of grade 6 students for whom there are no results on the state grade 5 mathematics assessment.

Public Notice

A district shall make public the criteria for automatic enrollment in a middle school advanced mathematics program, including any criteria for a local measure, before the start of each school year.

Parent Notice

A district shall provide a written notice to the parent or guardian of each student entering grade 6 who will be automatically enrolled in a middle school advanced mathematics program. The written notification shall be provided no later than 14 days before the first day of instruction for the school year. The required notice shall include a description of:

1. The purpose of the program;
2. The middle school advanced mathematics program offered by the district, including an overview of the content addressed at each grade level;
3. Resources offered to support student success;
4. The right of the parent or guardian to opt their child out of the middle school advanced mathematics program; and
5. The process for a parent or guardian to opt their child out of the program and any associated deadlines.

Opt Out

The parent or guardian of a student who will be automatically enrolled in a middle school advanced mathematics program may opt the student out of automatic enrollment in an advanced mathematics program.

A district shall obtain written approval from the parent or guardian to remove a student from the middle school advanced mathematics program.

Annual Report

A district shall annually report to the Texas Education Agency (TEA) data related to student enrollment and performance in the middle school advanced mathematics program in a manner and time to be determined by TEA.

Other Process

These provisions do not prohibit a district from establishing a process to initially enroll grade 7 or 8 students in a middle school advanced mathematics program.

19 TAC 74.2101; Education Code 28.029

High School Courses at Earlier Grades

A district may offer courses designated for grades 9-12 in earlier grade levels. *19 TAC 74.26(b)*

Grades 9-12 Course Offerings

A district that offers grades 9-12 shall provide instruction in the required curriculum as specified in 19 Administrative Code 74.1. A district shall ensure that sufficient time is provided for teachers to teach and for students to learn the subjects in the required curriculum. *19 TAC 74.3(b)(1)*

A district shall offer the courses listed below in grades 9-12 and shall maintain evidence that students have the opportunity to take these courses:

1. English language arts — English I, II, III, IV, and at least one additional advanced English course.
2. Mathematics — Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications.
3. Science — Integrated Physics and Chemistry, Biology, Chemistry, Physics, and at least two additional science courses selected from Aquatic Science, Astronomy, Earth and Space Science, Environmental Systems, Advanced Animal Science, Advanced Biotechnology, Advanced Plant and Soil Science, Anatomy and Physiology, Engineering Design and Problem Solving, Food Science, Forensic Science, Medical Microbiology, Pathophysiology, Scientific Research and Design, and Principles of Engineering.
    a. The requirement to offer two additional courses may be reduced to one by the commissioner upon application of

a district with a total high school enrollment of less than 500 students.

b. Science courses shall include at least 40 percent hands-on laboratory investigations and field work using appropriate scientific inquiry.

4. Social studies — United States History Studies Since 1877, World History Studies, United States Government, World Geography Studies, Personal Financial Literacy, Economics with Emphasis on the Free Enterprise System and Its Benefits, and Personal Financial Literacy and Economics. The requirement to offer both Economics with Emphasis on the Free Enterprise System and Its Benefits and Personal Financial Literacy and Economics may be reduced to one by the commissioner upon application of a district with a total high school enrollment of less than 500 students.

5. Physical education — at least two courses selected from:

   a. Lifetime Fitness and Wellness Pursuits;

   b. Lifetime Recreation and Outdoor Pursuits; or

   c. Skill-Based Lifetime Activities.

6. Fine arts — courses selected from at least two of the four fine arts areas (art, music, theatre, and dance) as follows:

   a. Art I, II, III, IV;

   b. Music I, II, III, IV;

   c. Theatre I, II, III, IV; or

   d. Dance I, II, III, IV.

7. Career and technical education [see EEL] — three or more career and technical education courses for four or more credits with at least one advanced course aligned with a specified number of Texas Education Agency (TEA)-designated programs of study determined by enrollment as follows:

   a. One program of study for a district with fewer than 500 students enrolled in high school;

   b. Two programs of study for a district with 501-1,000 students enrolled in high school;

   c. Three programs of study for a district with 1,001-2,000 students enrolled in high school;

d. Four programs of study for a district with 1,001-5,000 students enrolled in high school;

e. Five programs of study for a district with 5,001-10,000 students enrolled in high school; and

f. Six programs of study for a district with more than 10,000 students enrolled in high school.

8. Languages other than English — Levels I, II, and III or higher of the same language.

9. Computer science — one course selected from Fundamentals of Computer Science, Computer Science I, or Advanced Placement (AP) Computer Science Principles.

10. Speech — Communication Applications.

19 TAC 74.3(b)(2)

A district must provide each student the opportunity each year to select courses in which he or she intends to participate from a list that includes all courses listed above. If a district will not offer all required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact.

A district shall teach any course a student is specifically required to take for high school graduation at least once in any two consecutive school years. For a subject that has an end-of-course assessment, a district shall either teach the course every year or use alternate delivery systems, as described in 19 Administrative Code Chapter 74, Subchapter C, to enable students to earn credit for the course and shall maintain evidence thereof.

19 TAC 74.3(b)(4)

A district may offer additional courses from the complete list of courses approved by the SBOE to satisfy graduation requirements. *19 TAC 74.3(b)(3)*

A district may allow a student to enroll concurrently in Algebra I and geometry. *Education Code 28.025(b-6)*

Personal Financial Literacy

Each district shall provide an elective course in personal financial literacy that meets the requirements for a one-half elective credit, using materials approved by the SBOE. The instruction in personal financial literacy must include instruction on completing the application for federal student aid provided by the Department of Education. In fulfilling the requirement to provide financial literacy instruction, a district may use an existing state, federal, private, or

nonprofit program that provides students without charge the described instruction. *Education Code 28.0021(b)*

The SBOE shall allow a student to comply with the curriculum requirement for a one-half credit in personal financial literacy by successfully completing an advanced placement course designated by the SBOE as containing substantively similar and rigorous academic content. *Education Code 28.025(b-24)*

Nutrition and Wellness

Each district offering a high school program shall provide an elective course in nutrition and wellness that meets the requirements for a one-half elective credit, using materials approved by the SBOE. The nutrition instruction must include curriculum requirements based on nutritional guidelines recommended by the Texas Nutrition Advisory Committee and may incorporate other relevant material, including culinary skills, horticulture, and consumer economics. *Education Code 28.0115*

Applied Courses

A school district may offer the foundation curriculum in an applied manner. The courses delivered in an applied manner must cover the essential knowledge and skills, and the student shall be administered the applicable end-of-course assessment instrument. *Education Code 28.025(b-4)*

Research Writing Component

For students entering grade 9 beginning with the 2007-08 school year, districts must ensure that one or more courses offered in the required curriculum for the Recommended and Advanced/ Distinguished Achievement High School Programs include a research writing component. *19 TAC 74.3(b)(5)*

Parenting Awareness Program

High School

A district shall use the parenting and paternity awareness program developed by the SBOE in its high school health curriculum.

Middle and Junior High School

A district may use the program in the district's middle or junior high school curriculum.

Program Requirements

Implementation of this requirement shall comply with the requirement that the board establish a local school health advisory council to assist the district in ensuring that local community values are reflected in the district's health education instruction.

A district may add elements at its discretion but must include the following areas of instruction:

1. Parenting skills and responsibilities, including child support;
2. Relationship skills, including money management, communication, and marriage preparation; and

3. Skills relating to the prevention of family violence, only if the district's middle, junior high, or high schools do not have a family violence program.

At the discretion of the district, a teacher may modify the suggested sequence and pace of the program at any grade level.

Local Programs and Materials

A district may develop or adopt research-based programs and curriculum materials for use in conjunction with the program developed by the SBOE. The programs and curriculum materials may provide instruction in:

1. Child development;
2. Parenting skills, including child abuse and neglect prevention; and
3. Assertiveness skills to prevent teenage pregnancy, abusive relationships, and family violence.

Parent Permission

A student under 14 years of age may not participate in the program without the permission of the student's parent or person standing in parental relation to the student.

Education Code 28.002(p); 19 TAC 74.35(a)

Alcohol Awareness Instruction

A district shall incorporate instruction in the dangers, causes, consequences, signs, symptoms, and treatment of binge drinking and alcohol poisoning into any course meeting a requirement for a health education credit.

A district shall choose an evidence-based alcohol awareness program to use in the district's middle school, junior high school, and high school health curriculum from a list of programs approved by the commissioner for this purpose.

"Evidence-based alcohol awareness program" means a program, practice, or strategy that has been proven to effectively prevent or delay alcohol use among students, as determined by evaluations that use valid and reliable measures and that are published in peer-reviewed journals.

Education Code 28.002(r); 19 TAC 74.35(b)

Fentanyl Abuse and Drug Poisoning Instruction

A district shall annually provide research-based instruction related to fentanyl abuse prevention and drug poisoning awareness to students in grades 6 through 12.

The instruction must include:

1. Suicide prevention;

2. Prevention of the abuse of and addiction to fentanyl;

3. Awareness of local school and community resources and any processes involved in accessing those resources; and

4. Health education that includes information about substance use and abuse, including youth substance use and abuse.

The required instruction may be provided by an entity or an employee or agent of an entity that is:

1. A public or private institution of higher education;

2. A library;

3. A community service organization;

4. A religious organization;

5. A local public health agency; or

6. An organization employing mental health professionals.

Education Code 38.040

CPR and AED Instruction

A district shall provide instruction to students in grades 7-12 in cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED). The instruction may be provided as a part of any course. A student shall receive the instruction at least once before graduation.

CPR instruction must include training in cardiopulmonary resuscitation techniques and the use of an AED that has been developed by the American Heart Association or the American Red Cross or using nationally recognized, evidence-based guidelines for emergency cardiovascular care and incorporating psychomotor skills to support the instruction.

A district may use emergency medical technicians, paramedics, police officers, firefighters, representatives of the American Heart Association or the American Red Cross, teachers, other school employees, or other similarly qualified individuals to provide instruction and training. Instruction is not required to result in CPR or AED certification. If instruction is intended to result in certification, the course instructor must be authorized to provide the instruction by the American Heart Association, the American Red Cross, or a similar nationally recognized association. If the instruction is not intended to result in certification, an instructor of this training is not required to be certified in CPR.

Waivers for Students with Disabilities

A district may waive this requirement for a student who, due to a disability, is unable to complete the instruction. The determination regarding a student's ability to complete the CPR or AED requirements must be made by:

1. The student's admission, review, and dismissal (ARD) committee if the student receives special education services under Education Code Chapter 29, Subchapter A; or
2. The committee established for the student under Section 504, if the student does not receive special education services, but is covered by Section 504.

Applicability

The requirement to receive instruction in CPR applies to any student who entered grade 7 in the 2010-11 school year and thereafter. The requirement to receive instruction in the use of an AED applies to any student who entered grade 7 in the 2024-25 school year and thereafter.

Education Code 28.0023(c)-(e), (g); 19 TAC 74.38

Donations

A district may accept from TEA donations the agency receives under Education Code 7.026 for use in providing instruction to students in the principles and techniques of CPR and the use of an AED. A district may accept other donations, including donations of equipment, for use in providing CPR instruction and the use of an AED. *Education Code 29.903*

Proper Interaction with a Peace Officer

For any student entering grade 9 in the 2018-19 school year and thereafter, a district shall provide instruction in one or more courses to students in grades 9-12 on proper interaction with peace officers during traffic stops and other in-person encounters. The required instruction may be provided as part of any course or courses and must be provided to each student at least once before graduation from high school.

The instruction must include all the information required by 19 Administrative Code 74.39(b). A district shall use materials developed through a memorandum of understanding among the Texas Commission on Law Enforcement, the SBOE, and TEA. A district may tailor the instruction developed under this section as appropriate for the district's community. In tailoring the instruction, the district shall solicit input from local law enforcement agencies, driver training schools, and the community.

A district shall clearly indicate on the transcript or academic achievement record the year in which the instruction was provided to the student.

19 TAC 74.39; Education Code 28.012

Driving With Disability Program	For information regarding the required notice for students who are receiving special education services or who are covered by Section 504, see EHBAD.

Parental Notice of Assistance for Learning Difficulties

Each school year, a district shall notify a parent of each child, other than a child enrolled in a special education program under Education Code Chapter 29, Subchapter A, who receives assistance from the district for learning difficulties, including through the use of intervention strategies, that the district provides that assistance to the child. The notice must:

1. Be provided when the child begins to receive the assistance for that school year;

2. Be written in English or, to the extent practicable, the parent's native language; and

3. Include:

    a. A reasonable description of the assistance that may be provided to the child, including any intervention strategies that may be used;

    b. Information collected regarding any intervention in the base tier of a multi-tiered system of supports that has previously been used with the child;

    c. An estimate of the duration for which the assistance, including through the use of intervention strategies, will be provided;

    d. The estimated time frames within which a report on the child's progress with the assistance, including any intervention strategies used, will be provided to the parent; and

    e. A copy of the explanation provided under Education Code 26.0081(c) of the options and requirements for students who have learning difficulties or who need or may need special education. [See FB]

This required notice may be provided to a child's parent at a meeting of the team established for the child under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), if applicable.

Education Code 26.0081(d)-(e)

"Intervention strategy" means a strategy in a multi-tiered system of supports that is above the level of intervention generally used in that system with all children. The term includes response to intervention and other early intervening strategies. *Education Code 26.004(a)*

Dyslexia and Related Disorders

Definitions

"Screening a student for dyslexia or a related disorder" means the administration of a universal screening instrument required for students in kindergarten and grade 1.

"Testing a student for dyslexia or a related disorder" means a comprehensive evaluation as required under the Individuals with Disabilities Education Act (IDEA) [see EHBAA], and includes evaluation components as stated in the *Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders*,[1] for the identification of dyslexia or a related disorder.

"Treatment for a student identified with dyslexia or a related disorder" means any instructional accommodations through an accommodation plan under Section 504 or instructional accommodations, modifications, and/or the provision of dyslexia instruction in accordance with a student's individualized education program (IEP).

"Direct dyslexia instruction, or dyslexia instruction" means evidence-based dyslexia instruction that includes the required components of dyslexia instruction and instructional delivery methods as outlined in the *Dyslexia Handbook* and as described by a student's IEP.

"Provider of dyslexia instruction (PDI)" means a provider who meets the requirements of Education Code 29.0032, see below.

19 TAC 74.28(a)

IDEA Requirements

Dyslexia is an example of and meets the definition of a specific learning disability under the IDEA [see EHBAA]. If a district suspects or has a reason to suspect that a student may have dyslexia, including after evaluation or use of a reading diagnosis under Education Codes 28.006 [see EKC] or 38.003 [see below], and that the student may be a child with a disability under IDEA, the district must:

1. Provide to the student's parent or a person standing in parental relation to the student a form developed by the Texas Education Agency (TEA) explaining the rights available under the IDEA that may be additional to the rights available under Section 504 [see FB];

2. Comply with all federal and state requirements, including the *Dyslexia Handbook*, as adopted by the State Board of Education (SBOE), and its subsequent amendments, regarding any evaluation of the student; and

3. If the student is evaluated for dyslexia or a related disorder, also evaluate the student in any other areas in which the district suspects the student may have a disability.

Education Code 29.0031(a)

Board Action Required

The board must adopt and implement a policy requiring the district to comply with 19 Administrative Code 74.28, inclusive of the *Dyslexia Handbook* and the provision of dyslexia instruction for students identified with dyslexia or a related disorder as determined by the student's admission, review, and dismissal (ARD) committee.

A district's policy must be implemented according to the *Dyslexia Handbook*.

19 TAC 74.28(b)-(c); Education Code 38.003(b)

Compliance Monitoring

Districts will be subject to monitoring for compliance with federal law and regulations in connection with 19 Administrative Code 74.28. Districts will be subject to auditing and monitoring for compliance with state dyslexia laws in accordance with administrative rules adopted by the commissioner of education as required by Education Code 38.003(c-1). *19 TAC 74.28(g)*

Special Education Evaluation

The multidisciplinary evaluation team and any subsequent team convened to determine a student's eligibility for special education and related services [see EHBAA] must include at least one member with specific knowledge regarding the reading process, dyslexia and related disorders, and dyslexia instruction. The member must:

1. Hold a licensed dyslexia therapist license under Occupations Code Chapter 403;

2. Hold the most advanced dyslexia-related certification issued by an association recognized by the SBOE, and identified in, or substantially similar to an association identified in, the program and rules adopted under Education Code 7.102 and 38.003; or

3. If a person qualified under item 1 or 2 is not available, meet the applicable training requirements adopted by the SBOE in the *Dyslexia Handbook*.

A member of a multidisciplinary evaluation team and any subsequent team convened to determine a student's eligibility for special education and related services must sign a document describing the member's participation in the evaluation of the student and any

resulting individualized education program developed for the student.

Education Code 29.0031(b)-(c); 19 TAC 74.28(h)

Screening, Testing, and Identification

The SBOE shall identify the necessary criteria and elements that provide for universal screening for dyslexia and related disorders for students in kindergarten and first grade. The criteria and elements identified by the SBOE must be included in the reading instrument adopted or approved under Education Code 28.0063. [See EKC] *Education Code 38.003(a)-(a-1)*

A district shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the results of the screening for dyslexia and related disorders required for each student in kindergarten and each student in grade 1. *19 TAC 74.28(e)*

Parent Education

A district shall provide to parents of students enrolled in the district information on:

1. Characteristics of dyslexia and related disorders;
2. Evaluation and identification of dyslexia and related disorders;
3. Effective instructional strategies for teaching students with dyslexia and related disorders;
4. Qualifications of and contact information for PDIs at each campus or school;
5. Instructional accommodations and modifications;
6. The steps in the special education process, as described in the form developed by TEA explaining the rights available under the IDEA that may be additional to the rights available under Section 504; and
7. How to request a copy and access the electronic version of the *Dyslexia Handbook*.

19 TAC 74.28(f)

Instruction

A district must provide evidence-based dyslexia instruction by a PDI for students with dyslexia or a related disorder that includes the required instructional and delivery components found *Dyslexia Handbook*. *19 TAC 74.28(d)*

Progress Reports

At least once each grading period, and more often if provided for in a student's individualized education program, a district shall provide the parent of or person standing in parental relation to a student receiving dyslexia instruction with information regarding the

	student's progress as a result of the student receiving that instruction. *Education Code 29.0031(d)*
Providers of Dyslexia Instruction	A PDI to students with dyslexia and related disorders must be fully trained in the district's adopted instructional materials for students with dyslexia and is not required to hold a certificate or permit in special education issued under Education Code Chapter 21, Subchapter B unless the provider is employed in a special education position that requires the certification. The completion of a literacy achievement academy under Education Code 21.4552 by an educator who participates in the evaluation or instruction of students with dyslexia and related disorders does not satisfy the requirements of this provision. *Education Code 29.0032*
Reassessment	Unless otherwise provided by law, a student determined to have dyslexia during screening or testing or accommodated because of dyslexia may not be rescreened or retested for dyslexia for the purpose of reassessing the student's need for accommodations until the district reevaluates the information obtained from previous screening or testing of the student. *Education Code 38.003(b-1)*
Talking Book Program Notification	A district shall notify the parent of a student identified with dyslexia or a related disorder of the Talking Book Program administered by the Texas State Library and Archives Commission and other available audio book services. *Education Code 29.0031(e)*

[1] *Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders*: https://tea.texas.gov/academics/special-student-populations/dyslexia-and-related-disorders

Note: The policies in the EHBA series are statements of principles governing special education programs for Texas school districts. In no way are these policies intended to cover the entire scope and detail involved in administering any special education program.

Nondiscrimination

No qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any district service, program, or activity. *42 U.S.C. 12132; 29 U.S.C. 794(a); 34 C.F.R. 104.4(a)* [See also FB]

Free Appropriate Public Education (FAPE)

Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through approved contracts. Instruction shall be supplemented by the provision of related services when appropriate. *Education Code 29.003(a)*

"Free appropriate public education" (FAPE) means special education and related services that:

1. Have been provided at public expense, under public supervision and direction, and without charge;
2. Meet standards set out by the Texas Education Agency (TEA);
3. Include an appropriate preschool, elementary school, or secondary school education; and
4. Are provided in conformity with the student's individualized education program (IEP).

20 U.S.C. 1401(9); 34 C.F.R. 300.13, .17, .36

Least Restrictive Environment

A district shall ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *20 U.S.C. 1412(a)(5); 34 C.F.R. 300.114(a)(2)*

Policies, Procedures, Programs, and Practices

A district must develop policies, procedures, programs, and practices that are consistent with the state's established policies, procedures, programs, and services to implement the Individuals with Disabilities Education Act (IDEA). *19 TAC 89.1075(b)*

Interventions and Sanctions

TEA has established a system of interventions and sanctions in accordance with IDEA; Education Code 29.010; Chapter 39; and Chapter 39A, that include, but are not limited to, the following:

1. Onsite review for failure to meet program or compliance requirements;
2. Required program or compliance audits, paid for by the district;
3. Required submission of corrective actions, including, but not limited to, compensatory services, paid for by the district;
4. Required technical assistance and support, paid for by the district;
5. Public release of program or compliance review or audit findings;
6. Special investigation and/or follow-up verification visits;
7. Required public hearing conducted by the local school board;
8. Assignment of a monitor, conservator, or management team, as these terms are defined in Education Code Chapter 39A [see AIC], paid for by the district;
9. Hearing before the commissioner of education or designee;
10. Placing specific conditions on grant funds, reduction in payment, required redirection of funds, or withholding of funds;
11. Lowering of the special education monitoring/compliance status and/or the accreditation rating of the district; and/or
12. Other authorized interventions and sanctions as determined by the commissioner.

19 TAC 89.1076

TEA may require a district to obtain specialized technical assistance for a documented noncompliance issue or if data indicates that technical assistance is needed, such as an incident involving injury to staff or students by a student receiving special education services or data indicating an excessive number of restraints are used on students receiving special education services. *Education Code 29.010(a-1)*

Instructional Arrangements and Settings

Instructional arrangements/settings shall be based on the individual needs and IEPs of eligible students receiving special education services and shall include the following.

Mainstream

The mainstream instructional arrangement/setting is for providing special education and related services to a student in the general education classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services to the student and/or the student's general education classroom teacher(s) necessary to enrich the general education classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP.

Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, educational aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her general education classroom teacher(s) regarding the student's progress in general education classes, staff development, and reduction of ratio of students to instructional staff. Monitoring student progress in and of itself is not a special education service; this cannot be listed as the only specially designed instruction documented in a student's IEP.

Homebound

The homebound instructional arrangement/setting, also referred to as home-based instruction, is for providing special education and related services to students who are served at home or hospital bedside.

Medical Reasons

Homebound instruction is used for a student whose admission, review, and dismissal (ARD) committee has received medical documentation from a physician licensed to practice in the United States that the student is expected to incur full-day absences from school for a minimum of four weeks for medical reasons, which could include psychological disorders, and the ARD committee has determined that this is the most appropriate placement for the student. The weeks do not have to be consecutive. For the ARD committee to approve this placement, the committee will review documentation related to anticipated periods of student confinement to the home, as well as whether the student is determined to be chronically ill or any other unique medical circumstances that would require this placement in order to provide FAPE to the student. Documentation by a physician does not guarantee the place-

	ment of a student in this instructional arrangement/setting, as the student's ARD committee shall determine whether the placement is necessary for the provision of FAPE, and, if so, will determine the amount of services to be provided to the student at home in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations.
Children Ages 3-5	Home-based instruction may be used for children ages three through five when determined appropriate by the child's ARD committee and as documented in the student's IEP. While this setting would generate the same weight as the homebound instructional arrangement/setting, the data on this setting may be collected differently than the medical homebound arrangement/setting.
Hospital Class	The hospital class instructional arrangement/setting is for providing special education and related services by school personnel in a hospital or other medical facility, or at a residential care and treatment facility not operated by the district. If a student residing in the facility is provided special education and related services at a district campus and the parent, including a surrogate parent, is a district resident, the student's instructional arrangement/setting would be assigned based on the services that are provided at the campus on the same basis as a resident student residing with his or her parents.
Speech Therapy	The speech therapy instructional arrangement/setting is for providing speech therapy services whether in a general education classroom or in a setting other than a general education classroom. When the only special education service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement. If a student's IEP indicates that a special education teacher is involved in the implementation of the student's IEP but there is no indication of how that teacher provides a special education service, the student is in the speech therapy instructional arrangement/setting. When a student receives speech therapy and a related service but no other special education service, the student is in the speech therapy instructional arrangement/setting.
Resource Room/Services	The resource room/services instructional arrangement/setting is for providing special education and related services to a student in a setting other than general education for less than 50 percent of the regular school day. For funding purposes, this will be differentiated between the provision of special education and related services to a student in a setting other than general education for less than 21 percent of the instructional day and special education and related services provided to a student in a setting other than general edu-

cation for at least 21 percent of the instructional day but less than 50 percent of the instructional day.

Self-Contained (Mild, Moderate, or Severe) Regular Campus

The self-contained (mild, moderate, or severe) regular campus instructional arrangement/setting is for providing special education and related services to a student who is in a setting other than general education for 50 percent or more of the regular school day on a regular school campus. For funding purposes, mild/moderate will be considered at least 50 percent but no more than 60 percent of the student's instructional day, and severe will be considered more than 60 percent of the student's instructional day.

Off-Home Campus

The off-home campus instructional arrangement/setting is for providing special education and related services to the following:

1. A student at South Texas Independent School District or Windham School District;
2. A student who is one of a group of students from one or more districts served in a single location in another district when a FAPE is not available in the sending district;
3. A student in a community setting, facility, or environment operated by a district that prepares the student for postsecondary education/training, competitive integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives;
4. A student in a community setting or environment not operated by a district that prepares the student for postsecondary education/training, competitive integrated employment, and/or independent living in coordination with the student's individual transition goals, with regularly scheduled instruction or direct involvement provided by district personnel;
5. A student in a facility not operated by a district with instruction provided by district personnel; or
6. A student in a self-contained program at a separate campus operated by the district that provides only special education and related services.

Nonpublic Day School

The nonpublic day school instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education when the district is unable to provide FAPE for the student. This instructional arrangement/setting includes the providers listed in 19 Administrative Code 89.1094 [see Off-Camps Program, below].

Vocational Adjustment Class/Program	Although referred to as a class, the vocational adjustment class/program instructional arrangement/setting is a support program for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's transition plan, as documented in the student's IEP, and may include special education services received in career and technical education work-based learning programs.
Residential Care and Treatment Facility (Not District Resident)	The residential care and treatment facility (not district resident) instructional arrangement/setting refers to a facility at which a student with a disability currently resides, who was not placed at the facility by the student's ARD committee, and whose parent or guardian does not reside in the district providing educational services to the student. This instructional arrangement/setting is for providing special education and related services to a student on a district campus who resides in a residential care and treatment facility and whose parents do not reside within the boundaries of the district that is providing educational services to the student. If the instruction is provided at the facility, rather than on a district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement, or if the student resides at a state-supported living center, the instructional arrangement will be considered the state school arrangement/setting. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.
State-Supported Living Center	The state-supported living center instructional arrangement/setting is for providing special education and related services to a student who resides at a state-supported living center when the services are provided at the state-supported living center location. If services are provided on a local district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting. *19 TAC 89.1005(e)*
Other Program Options	While the above provision uses the names of the instructional arrangements/settings as they are described in Education Code 48.102, there may be additional instructional arrangement/setting codes that are created by TEA.

Other program options that may be considered for the delivery of special education and related services to a student may include contracts with other districts and other programs approved by TEA.

19 TAC 89.1005(d), (h)

Contracts for Services

A district that contracts for services from nonpublic day schools or residential placements must do so in accordance with 34 C.F.R. 300.147, and 19 Administrative Code 89.1092 and 89.1094. *19 TAC 89.1075(g)*

Instructional Day

Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP. *19 TAC 89.1075(f)*

A student's ARD committee shall determine the student's instructional arrangement/setting based on the percentage of the student's instructional day that the student receives special education and related services in a setting other than general education. *19 TAC 89.1005(c)*

Related Services

"Related services" means transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children.

The term includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive FAPE as described in the child's IEP, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that medical services shall be for diagnostic and evaluation purposes only.

The term does not include a medical device that is surgically implanted, the optimization of the device's functioning, or the replacement of such device.

20 U.S.C. 1401(26); 34 C.F.R. 300.34

Extended School Year Services

Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities. A district shall ensure that ESY services are available as necessary to provide a student with a disability with FAPE.

ESY services must be provided only if the ARD committee determines, on an individual basis, that the services are necessary for FAPE. A district may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of ESY services.

ESY shall be provided in accordance with 19 Administrative Code 89.1065.

34 C.F.R. 300.106(a); 19 TAC 89.1065(a)

Off-Campus Program

An off-campus program includes special education and related services provided during school hours in a facility other than a school district campus.

Program Provider

An off-campus program provider is an entity that provides the services identified above and includes:

1. A county system operating under application of former law as provided in Education Code 11.301;
2. A regional education service center established under Education Code, Chapter 8;
3. A nonpublic day school; or
4. Any other public or private entity with which a school district enters into a contract under Education Code 11.157(a), for the provision of special education services in a facility other than a district campus operated by a district.

19 TAC 89.1094(a)(2)-(3)

Program Placement

A district may contract with an off-campus program provider to provide some or all of the special education and related services to a student in accordance with the requirements in 19 Administrative Code 89.1094.

Before the district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct:

1. An onsite review to ensure that the off-campus program is appropriate for meeting the student's educational needs; and
2. A meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 C.F.R. 300.320-.325, state statutes, and commissioner of education rules in 19 Administrative Code Chapter 89 (Commissioner’s Rules Concerning Special Education Services).

The appropriateness of the off-campus program for each student placed shall be documented in the IEP annually. The student's ARD committee may only recommend an off-campus program placement for a student if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the district. The district must follow the requirements of 19 Administrative Code 89.1094(b)(3)(A)-(C), regarding the review of the placement of the off-campus program for each student.

The placement of more than one student in the same off-campus program facility may be considered in the same on-site visit to a facility. However, the IEP of each student must be individually reviewed, and a determination of appropriateness of placement and services must be made for each student.

19 TAC 89.1094(b)

Notification and Review

Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in an off-campus program, a district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.

If the off-campus program is on the commissioner's list of approved off-campus programs, TEA will review the student's IEP and placement as required by 34 C.F.R. 300.120, and, in the case of a placement in or referral to a private school or facility, 34 C.F.R. 300.146. After review, TEA will notify the district whether federal or state funds for the off-campus program placement are approved. If TEA does not approve the use of funds, it will notify the district of the basis for the non-approval.

If the off-campus program is not on the commissioner's list of approved off-campus programs, TEA will begin the approval procedures described below. Districts must ensure there is no delay in implementing a child's IEP in accordance with 34 C.F.R. 300.103(c).

If an off-campus program placement is ordered by a special education hearing officer or court of competent jurisdiction, the district must notify TEA of the order within 30 calendar days. The off-campus program serving the student is not required to go through the approval procedures described in 19 Administrative Code 89.1094 for the ordered placement. If, however, the district or other districts intend to place other students in the off-campus program, the off-campus program will be required to go through the approval proce-

	dures to be included on the commissioner's list of approved off-campus programs. *19 TAC 89.1094(c)*
Approval	Off-campus programs must have their educational programs approved for contracting purposes by the commissioner in accordance with 19 Administrative Code 89.1094(d).
Funding Procedures	The cost of off-campus program placements will be funded according to Education Code 48.102 and 19 Administrative Code 89.1005(e).
Contracts	Contracts between districts and approved off-campus programs must not exceed a district's fiscal year and shall not begin prior to July 1 of the contracted fiscal year. Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change in placement or services within the school district's fiscal year. *19 TAC 89.1094(e)(1)-(2)*
Change of Residence	If a student who is placed in an off-campus program by a district changes his or her residence to another Texas district during the school year, the district must notify TEA within 10 calendar days of the date on which the district ceased contracting with the off-campus program for the student's placement. The student's new district must meet the requirements of 34 C.F.R. 300.323(e), by providing comparable services to those described in the student's IEP from the previous district until the new district either adopts the student's IEP from the previous district or develops, adopts, and implements a new IEP. The new district must comply with all procedures described in 19 Administrative Code 89.1094 for continued or new off-campus program placement. *19 TAC 89.1094(e)(3)*

Identification

Child Find

A district shall ensure that all children residing within the district who have disabilities, regardless of the severity of their disabilities, and who are in need of special education and related services are identified, located, and evaluated. This requirement applies to:

1. Homeless children;
2. Children who are wards of the state;
3. Children attending private schools;
4. Highly mobile children (including migrant children); and
5. Children who are suspected of being in need of special education but who are advancing from grade to grade.

20 U.S.C. 1412(a)(3)(A); 34 C.F.R. 300.111(a)(1)(i), (c)

Private School Students

A district shall conduct a timely and meaningful consultation with private school representatives regarding the child find process and the provision of special education and related services to children enrolled in private schools in the district.

A district shall undertake activities similar to those undertaken for public school children and shall complete the child find process for children enrolled in private schools in a time period comparable to that for other students attending public schools in the district.

20 U.S.C. 1412(a)(10)(A)(ii)-(iv) [See EHBAC regarding students in nondistrict placement.]

Preschool Students

A district shall develop a system to notify district residents with children who are at least three and younger than six and who are eligible for enrollment in a special education program of the availability of the program. *Education Code 29.009*

Students Not Enrolled in District

The parent of a child who is not enrolled in a school district may request that a school district conduct a Full and Individual Initial Evaluation (FIIE) for the child for purposes of determining the child's eligibility for special education services and participation in the program as a child with a disability. A school district that receives such a request shall follow procedures, including for timely completion, for a FIIE in accordance with federal law and Education Code 29.004 not later than the 45th school day after the date the district receives parental consent to conduct the evaluation. [See Initial Evaluation Required, below]

If a school district determines based on an evaluation that a child is eligible for special education services, the district shall develop an individualized education program (IEP) for the child for purposes of

establishing the child's eligibility to participate in the program as a child with a disability.

At the request of the Texas Education Agency (TEA), the district shall provide TEA with a copy of the child's IEP.

Education Code 29.3615(a)-(d)

Requests and Referrals for Evaluation

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. *20 U.S.C. 1414(a)(1)(E)*

Multi-tiered System

Referral of students for a FIIE must be a part of the district's multi-tiered system of academic and behavioral supports. Students not making progress in the general education classroom should be considered for all interventions and support services available to all students; such as tutorial, compensatory, response to evidence-based intervention, and other academic or behavior support services.

The district cannot require a student to participate in interventions and support services for any specific length of time prior to a referral being made or an FIIE being conducted.

District Obligation to Refer

If the student continues to experience difficulty in the general education classroom with the provision of interventions and support services or at any time district personnel suspect a disability and a possible need for special education and related services, district personnel must refer the student for an FIIE.

A referral or request for an FIIE may be initiated at any time by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student. While an FIIE is being conducted, a student must continue to receive any necessary interventions and support services to target their academic or behavioral needs.

19 TAC 89.1011(a)

Prior Written Notice

Parent

If a parent submits a written request to a district's director of special education services or to a district administrative employee, such as a campus principal, for a FIIE of a student, the district shall, not later than the 15th school day after the date the district receives the request:

1. Provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 C.F.R. 300.503, a copy of the procedural safeguards notice required by 34 C.F.R. 300.504, a copy of the Overview of Special Education

for Parents form created by TEA, and an opportunity to give written consent for the evaluation; or

2. Provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 C.F.R. 300.503, a copy of the Overview of Special Education for Parents form created by TEA, and a copy of the procedural safeguards notice required by 34 C.F.R. 300.504.

District

When a district initiates the referral for an FIIE of a student, the district must provide the parent with the information and materials described at item 1 above.

19 TAC 89.1011(b)-(c); Education Code 29.004(c); 20 U.S.C. 1414(a)(1); 34 C.F.R. 300.301

Notice of Rights

A reasonable time before a district proposes or refuses to initiate the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education (FAPE) to a student, the district shall provide written notice to the student's parent or guardian. *20 U.S.C. 1415(b)(3); 34 C.F.R. 300.503(a)* [See EHBAE]

Initial Evaluation Required

A district shall conduct an FIIE before the initial provision of special education and related services. *20 U.S.C. 1414(a)(1)(A)*

Consent for Initial Evaluation

Before a district conducts an initial evaluation, it shall make reasonable efforts to obtain informed parental consent.

If the parent does not provide consent for an initial evaluation, or if the parent fails to respond to a request to provide consent, a district may, but is not required to, pursue the initial evaluation by utilizing due process procedures [see EHBAE], except to the extent inconsistent with state law relating to such parental consent.

Parental consent to initial evaluation shall not be construed as consent for placement for special education and related services.

20 U.S.C. 1414(a)(1)(D)(i)(I); 34 C.F.R. 300.300(b)

Wards of the State

If the child is a ward of the state and is not residing with the child's parent, a district shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation, unless:

1. Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent;

2. The rights of the parent have been terminated; or

3. The rights of the parent to make educational decisions have been subrogated and an individual appointed by a judge to

represent the student has given consent for an initial evaluation.

20 U.S.C. 1414(a)(1)(D)(iii); 34 C.F.R. 300.300(a)(2)

Time Frame for Completion of Written Report

A district must complete the written report of a full individual and initial evaluation:

1. Not later than the 45th school day following the date on which the district receives written consent for the evaluation from the student's parent. If a student has been absent from school during that period on three or more school days, the period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or

2. For students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or homeschool setting, not later than the 45th school day following the date on which the district receives written consent for the evaluation from the student's parent.

If a district receives written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a FIIE of a student must be provided to the student's parent not later than June 30 of that year.

If a district receives written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year but the student was absent three or more school days between the time that the school district received written consent and the last instructional day of the school year, the timeline in item 1 above applies to the date the written report of the FIIE must be completed.

If the district received the written consent for the evaluation from the student's parent less than 35 school days before the last day of the school year, the timeline in item 1, above, applies to the date the written report of the FIIE must be completed.

19 TAC 89.1011(d)-(e)

For purposes of the timelines under this provision, "school day" does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. In the case of a school that operates under a school year calendar without spring and fall terms, a school day does not include a day that falls after the last instruc-

tional day of one school year and before the first instructional day of the subsequent school year. *19 TAC 89.1011(i)-(j)*

These time frames do not apply if the parent repeatedly fails or refuses to produce the child for the evaluation. *34 C.F.R. 300.301(d)(1)*

Transfer Students

A district shall ensure that evaluations of children who transfer from one district to another in the same academic year are coordinated with the children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of evaluations. *34 C.F.R. 300.304(c)(5)*

If a student was in the process of being evaluated for special education eligibility by a district and enrolls in another district before the previous district completed the FIIE, the new district must coordinate with the previous district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 C.F.R., 300.301(d)(2) and (e) and 300.304(c)(5).

The timelines above do not apply in such a situation if:

1. The new school district is making sufficient progress to ensure a prompt completion of the evaluation; and
2. The parent and the new school district agree to a specific time when the evaluation will be completed.

19 TAC 89.1011(f); Education Code 29.004; 20 U.S.C. 1414(a)(1)(C), (b)(3)(D); 34 C.F.R. 300.301(c)-(e)

Student Communication

The evaluation shall be conducted using procedures that are appropriate for the student's most proficient method of communication. *Education Code 29.004(b)*

Children With Visual Impairments

To determine a child's eligibility for a district's special education program on the basis of visual impairment, the FIIE and any reevaluation of the child must:

1. Include an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist, as determined by commissioner rule, and be conducted in a variety of lighting conditions and settings, including the child's home, school, and community and in settings unfamiliar to the child; and
2. Provide for a person who is appropriately certified as an orientation and mobility specialist to participate, as part of a mul-

tidisciplinary team, in evaluating the data on which the determination of the child's eligibility is based.

Education Code 30.0021(b)

Eligibility and Reevaluations

A student is eligible to participate in a district's special education program:

1. From birth through 21 years of age if the student has a visual impairment, is deaf or hard of hearing, or is deaf-blind and that disability prevents the student from being adequately or safely educated in public school without the provision of special education services;

2. From age 3 through age 9 if the student is experiencing developmental delays as described by federal law and defined by commissioner rule; or

3. From age 3 through 21 if the student has one or more of the disabilities described by 20 U.S.C. 1401(3)(A) and that disability prevents the student from being adequately or safely educated in public school without the provision of special education services.

Education Code 29.003(b)

Disability Definitions

To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 C.F.R. 300.8(a), subject to the provisions of 34 C.F.R. 300.8(c), Education Code Subchapter A, and 19 Administrative Code 89.1040. The provisions in 19 Administrative Code 89.1040 specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law. *19 TAC 89.1040(a)*

[For additional information on special education of students with dyslexia and related disorders, see EHB.]

Visual and Auditory Impairments

Students with visual impairments or who are deaf or hard of hearing, or who are deaf-blind shall be eligible to participate in a district's special education program from birth. *19 TAC 89.1035(b); Education Code 30.002(e), .081*

Birth Through Age Two

Children from birth through the age of two with visual impairments (VI), who are deaf or hard of hearing (DHH), or who are deaf-blind (DB) must be enrolled at the parent's request by a district when the district becomes aware of a child needing services. The appropriate instructional arrangement [see EHBA] for students from birth through the age of two with VI, DHH, or DB shall be determined in accordance with the individualized family services plan, current attendance guidelines, and the agreement memorandum between

TEA and Texas Health and Human Services Commission Early Childhood Intervention (ECI) Services. *19 TAC 89.1005(d)*

Determination of Initial Eligibility

Upon completion of the administration of assessments and other evaluation measures, a team of qualified professionals and the parent shall make the determination of whether the child has a disability and of the educational needs of the child.

A district shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

20 U.S.C. 1414(b)(4); 34 C.F.R. 300.306(a)

The admission, review, and dismissal (ARD) [see EHBAB] committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, IEP and placement within 30 calendar days from the date of the completion of the written FIIE report. If the 30th day falls during the summer and school is not in session, the ARD committee must meet not later than the 15th school day of the following school year to finalize decisions concerning the student's initial eligibility determination, and, if appropriate, IEP and placement. If the 30th day falls during the summer and school is not in session but an FIIE report indicates that the student would need extended school year services during that summer, the ARD committee must meet as expeditiously as possible after completion of the report.

Parent Copy

A copy of the written FIIE report must be provided to the parent as soon as possible after completion of the report but no later than five school days prior to the initial ARD committee meeting, which will determine a student's initial eligibility, or not later than June 30 if the district received the written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year.

19 TAC 89.1011(g)-(h); Education Code 29.004(a-1)

[For additional information regarding the evaluation and identification process when dyslexia is a suspected disability, see EHB.]

Consent for Services

Initial Provision of Services

A district must obtain informed consent from the parent for the initial provision of special education and related services. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of services, the district:

1. May not use the procedures in 34 C.F.R. part 300 subpart E (including the mediation and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child;

2. Will not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the services for which the district requests consent; and

3. Is not required to convene an ARD meeting or develop an IEP for the child for the services.

Revoking Consent

If, at any time after the provision of initial services, the parent of a child revokes consent in writing for the continued provision of services, the district:

1. May not continue to provide services to the child, but must provide prior written notice before ceasing services;

2. May not use the procedures in 34 C.F.R. part 300 subpart E in order to obtain agreement or a ruling that the services may be provided to the child;

3. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further services; and

4. Is not required to convene an ARD meeting or develop an IEP for further provision of services.

34 C.F.R. 300.300(b)

Reevaluations

A district shall ensure that each child with a disability is reevaluated if the district determines that the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.

Reevaluation shall occur:

1. No more than once a year, unless the parent and the district agree otherwise; and

2. At least once every three years, unless the parent and district agree that a reevaluation is unnecessary.

A district shall obtain informed parental consent before conducting a reevaluation, except that informed parental consent is not needed if the district can demonstrate that it has taken reasonable measures to obtain consent and the child's parent has failed to respond.

20 U.S.C. 1414(a)(2), (c)(3); 34 C.F.R. 300.303

Evaluation for Change in Eligibility

A district must evaluate a child with a disability before determining that the child is no longer a child with a disability. However, an evaluation is not required before the termination of eligibility due to

graduation from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under state law. If a child's eligibility terminates under the aforementioned circumstances, a district must provide a summary of academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. *34 C.F.R. 300.305(e); 20 U.S.C. 1414(c)(5)*

[See EIF(LEGAL) at Summary of Academic Achievement and Evaluation.]

Independent Evaluation

The parents have a right to obtain an independent educational evaluation of their child. If a parent requests an independent evaluation, a district shall provide the parents with information regarding where one can be obtained and the district's criteria for independent evaluations.

The results of a parent-initiated independent educational evaluation, whether at public or private expense, must be considered by the district if it meets the district's criteria, in any decision made with respect to providing FAPE to the child.

At Public Expense

If a parent requests an independent evaluation at public expense, the district shall, without unnecessary delay, either:

1. File a due process complaint to request a hearing to show that its evaluation is appropriate; or
2. Ensure that an independent evaluation is provided at public expense, unless the district demonstrates that the evaluation obtained by the parent did not meet district criteria.

At Private Expense

If a district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has a right to an independent evaluation, but not at public expense.

34 C.F.R. 300.502

Prescription Medication

An employee of a district is prohibited from requiring a child to obtain a prescription for a substance covered under the federal Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation for special education, or receiving special education and related services.

Observations

An employee is not prohibited from consulting or sharing classroom-based observations with parents regarding a student's academic and functional performance, behavior in the classroom or school, or the need for evaluation for special education or related services.

20 U.S.C. 1412(a)(25)

Table of Contents

Admission, Review, and Dismissal Committee 2
Committee Members 3
Meetings 6
Written Notice 6
Intellectual Disability and Developmental Delay Information 7
Residential Placement Information 7
Students New to a District 7
In-State Transfers 7
Transfers from Another State 7
Transfer During the Summer 8
Students Who Are Homeless or in Substitute Care 9
Military Dependents 9
Individualized Education Program 9
Content of the IEP 11
Parent-Directed Services for Students Receiving Special Education 12
Behavioral Intervention Plan 13
Translation of IEP into Primary Language 13
Written Copy 14
Dyslexia or a Related Disorder 14
Autism/Pervasive Developmental Disorder 14
Visual Impairment, Deaf or Hard of Hearing, or Deaf-Blind 16
Collaborative Process 17
Modification of Existing IEP 18
Eligibility Folder 19
Teacher Access to IEP 19
Teacher Request to Review IEP 19

Admission, Review, and Dismissal Committee

A district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation [see EHBAA] is conducted. The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including 34 C.F.R. 300.321.

The district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the following:

1. 34 C.F.R. 300.320-300.325, and Education Code 29.005 (individualized education programs, below);
2. 34 C.F.R. 300.145-300.147 (relating to placement of eligible students in private schools by a school district [see EHBAC]);
3. 34 C.F.R. 300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services [see EHBAC]);
4. 34 C.F.R. 300.530 and 300.531, and Education Code 37.004 (disciplinary placement of students with disabilities [see FOF]);
5. 34 C.F.R. 300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility [see EHBAA]);
6. 34 C.F.R. 300.114-300.117 (relating to least restrictive environment [see EHBA]);
7. Education Code 28.006 (reading diagnosis [see EKC]);
8. Education Code 28.0211 (satisfactory performance on assessments; accelerated instruction [see EHBCA]);
9. Education Code 28.0212 (junior high or middle school personal graduation plan [see EIF]);
10. Education Code 28.0213 (intensive program of instruction [see EHBC]);
11. Education Code Chapter 29, Subchapter I (programs for students who are deaf or hard of hearing [see EHBH]);
12. Education Code 30.002 (state plan for children with visual impairments, who are deaf or hard of hearing, or who are deaf-blind [see EHBAA]);

13. Education Code 30.003 (support of students enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf [see EHBAC]);

14. Education Code 33.081 (extracurricular activities [see FM]);

15. Education Code 37.004 (disciplinary placement of students with disabilities [see FOF]);

16. Education Code 37.307 (placement and review of a registered sex offender who is a student with a disability [see FOE]);

17. Education Code Chapter 39, Subchapter B (state assessment [see EKB]); and

18. Education Code 48.102 (special education funding).

19 TAC 89.1050(a); 34 C.F.R. 300.116(a), .321(a)

Committee Members

A district shall ensure that each ARD committee meeting includes all of the following:

1. The parents, as defined by 34 C.F.R. 300.30, of a student with a disability;

2. At least one general education teacher of the student (if the student is, or may be, participating in the general education environment), who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;

3. At least one special education teacher or, if appropriate, at least one special education provider of the student;

4. A representative of the district who:

   a. Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;

   b. Is knowledgeable about the general education curriculum; and

   c. Is knowledgeable about the availability of resources of the district;

5. Other individuals who have knowledge or special expertise regarding the student at the discretion of the district or the parent;

6. An individual who can interpret the instructional implications of evaluation results, who may be a member of the ARD committee described in items 2-5;

7. The student, if appropriate;

8. For a student who is suspected to be deaf or hard of hearing, a teacher who is certified in the education of students who are deaf or hard of hearing;

9. For a student with a suspected or documented visual impairment, a teacher who is certified in the education of students with visual impairments;

10. For a student with suspected or documented deaf-blindness, a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing;

11. For a student with limited English proficiency, a member of the language-proficiency assessment committee (LPAC), who may also be a member as described at items 2 or 3;

12. For a student who is suspected or identified with dyslexia, when determining initial or continued eligibility, a professional who meets the requirements of Education Code 29.0031(b), and 19 Administrative Code 74.28, including any handbook adopted in the rule. [See EHB]

13. A representative of any participating agency likely to be responsible for providing transition services for a student, as appropriate, and with the consent of the student's parents or a student who has reached the age of majority; and

14. When considering initial or continued placement of a student in a career and technical education (CTE) program, a representative from CTE, preferably the teacher.

The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 C.F.R. 300.156.

19 TAC 75.1023(d)(1), 89.1050(c); 20 U.S.C. 1414(d)(1)(B); 34 C.F.R. 300.321

A district member of the ARD committee shall not be required to attend an IEP meeting, in whole or in part, if the parent and the district agree in writing that the attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed during the meeting.

A district member of the ARD committee may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services if the parent, in writing, and the

district consent to the excusal and the member submits, in writing, to the parent and the ARD committee, input into the development of the IEP before the meeting.

20 U.S.C. 1414(d)(1)(C); 34 C.F.R. 300.321(e)(1)-(2);19 TAC 89.1050(c)(4)

Regular Education Teacher

If an ARD committee is required to include a general education teacher, the general education teacher must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's IEP. *Education Code 29.005(a)*

Parent Participation

A district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded an opportunity to participate, including:

1. Notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend; and
2. Scheduling the meeting at a mutually agreed on time and place.

Parent Notice

The district must provide the parents with written notice of the ARD committee meeting at least five school days before the meeting unless the parents agree to a shorter timeframe.

The notice must:

1. Indicate the purpose, time, and location of the meeting and who will be in attendance; and
2. Inform the parents of the provisions in 34 C.F.R. 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child), and 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a child previously served under Part C).
3. For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team:
    a. Indicate:
        (1) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with 34 C.F.R. 300.320(b); and
        (2) That the district will invite the student; and

b. Identify any other agency that will be invited to send a representative.

If the purpose of the meeting is to consider transition services, the notice must also indicate this purpose, indicate that the district will invite the student, and identify any other agency that will be invited to send a representative.

34 C.F.R. 300.322(a)-(b); 19 TAC 89.1050(d)

Alternative Means of Meeting Participation

If neither parent can attend an ARD meeting, the district must allow other methods of participation, such as through telephone calls or video conferencing. *19 TAC 89.1050(d); 20 U.S.C. 1414(f); 34 C.F.R. 300.322(c)*

An ARD meeting may be conducted without a parent in attendance if a district is unable to convince the parents that they should attend, but the district shall have a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls, correspondence, or visits made or attempted and the results of any of those actions. *34 C.F.R. 300.322(d)*

Meetings

A district shall initiate and conduct ARD committee meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability. The committee shall review each child's IEP periodically, and, if appropriate, revise the IEP. A meeting must be held for this purpose at least once a year. The ARD committee must also determine the child's placement once a year.

A "meeting" does not include informal or unscheduled conversations involving district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provisions if those issues are not addressed in the child's IEP. A "meeting" also does not include preparatory activities that district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

20 U.S.C. 1414(d)(4); 34 C.F.R. 300.116(b)(1), .324(b), (c)(1), .501(b)(3)

Meeting at Parent's Request

Upon receipt of a written request for an ARD committee meeting from a parent, the school district must schedule and convene a meeting in accordance with the procedures above at Parent Participation and Parent Notice or within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting. *19 TAC 89.1050(e)*

Written Notice

A district must provide the parent with a written notice regarding the ARD committee meeting required above at Parent Participation and Parent Notice or notice explaining why the district refuses to

convene a meeting in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice. *19 TAC 89.1050(f)*

Intellectual Disability and Developmental Delay Information

At the first meeting during which a student's IEP is developed, a district shall provide the parent or legal guardian of a student who has an intellectual disability or developmental delay with information about services and public benefits provided by the local intellectual and developmental disability authority that serves the county in which the student resides. The Texas Education Agency (TEA) shall develop informational materials and make those materials available for use by districts. *Education Code 29.030*

Residential Placement Information

At a meeting of a child's ARD committee at which residential placement is discussed, the district shall provide the child's parent the materials developed by the Texas Health and Human Services Commission regarding educational residential placement options for children who may qualify for placement in a state supported living center. *Education Code 29.0056(c)*

Students New to a District

In-State Transfers

When a student transfers to a new district within the state in the same school year and the parents or previous district verifies that the student had an IEP that was in effect in the previous district , the new district must meet the requirements of 34 C.F.R. 300.323(e) by either adopting the student's IEP from the previous district or developing, adopting, and implementing a new IEP. The timeline for adopting the previous IEP or developing, adopting, and implementing a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

Transfers from Another State

When a student transfers from a district in another state in the same school year and the parents or previous district verifies that the student had an IEP that was in effect in the previous district, the new district must, if determined necessary, conduct a full individual and initial evaluation and make an eligibility determination and, if appropriate, develop, adopt, and implement a new IEP, within the timelines established in 19 Administrative Code 89.1011 (relating to Full and Individual Initial Evaluation) [see EHBAA]. If the district determines that an evaluation is not necessary, the timeline for the new district to develop, adopt, and implement a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

19 TAC 89.1055(s)(1)-(2); 20 U.S.C. 1414(d)(2)(C)(ii); 34 C.F.R. 300.323(g)

Transfer During the Summer

The above provisions regarding transfer apply to students who register in a new district in the state during the summer when students are not in attendance for instructional purposes, based on whether the students are coming from an in-state or out-of-state district.

Records

In accordance with 34 C.F.R. 300.323(g), the new district must take reasonable steps to promptly obtain the student's records from the previous district, and the previous district must furnish the new district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous district.

Verification

For the purposes of these provisions, "verify" means that the new district has received a copy of the student's IEP that was in effect in the previous district. The first school day after the new district receives a copy of the student's IEP that was in effect in the previous district begins the timelines associated with 19 Administrative Code 89.1055(s)(1)-(2), above.

If a parent hasn't already provided verification of eligibility and the new district has been unable to obtain the necessary verification records from the previous district by the 15th working day after the date a request for the records was submitted by the new district to the previous district, the new district must seek verification from the student's parent. If the parent provides verification, the new district must comply with all these provisions. The new district is encouraged to ask the parent to provide verification of eligibility before the 15th working day after the date a request for the records was submitted by the new district to the previous district. If the parent is unwilling or unable to provide such verification, the new district must continue to take reasonable steps to obtain the student's records from the previous district and provide any services comparable to what the student received at the previous district if they communicate those to the new district.

Services Before Verification

While the new district waits for verification, the new school district must take reasonable steps to provide, in consultation with the student's parents, services comparable to those the student received from the previous district if the new district has been informed by the previous district of the student's special education and related services and placement.

Comparable Services

Once the new district receives verification that the student had an IEP in effect at the previous district, comparable services must be provided to a student during the timelines established under 19 Administrative Code 89.1055(s)(1)-(2), above.

Comparable services include provision of extended school year (ESY) services if those services are identified in the previous IEP or if the new district has reason to believe that the student would be eligible for ESY services.

19 TAC 89.1055(s)(3)-(8)

Students Who Are Homeless or in Substitute Care

When a student who is homeless or in substitute care transfers into a district after being referred by a previous district for a special education evaluation, the receiving district must accept the referral and ensure that any written report of a full individual and initial evaluation is completed in accordance with the timelines established in 19 Administrative Code 89.1011 (relating to Full and Individual Initial Evaluation).

When a student who is homeless or in substitute care is eligible for special education and transfers into a new district during the school year, the receiving district must ensure that it meets the student transfer requirements of 19 Administrative Code 89.1050(j) (relating to the Admission, Review, and Dismissal Committee).

19 TAC 89.1615

Military Dependents

A district shall initially provide comparable services to a military student with disabilities based on his or her current IEP. This does not preclude the district from performing subsequent evaluations to ensure appropriate placement of the student. *Education Code 162.002 art. V, C* [See FDD]

Individualized Education Program

A district shall develop, review, and revise an IEP for each child with a disability. *20 U.S.C. 1412(a)(4); 34 C.F.R. 300.320(a)*

At the beginning of each school year, a district shall have in effect, for each child with a disability in its jurisdiction, an IEP. *20 U.S.C. 1414(d)(2)(A); 34 C.F.R. 300.323(a)*

The term “individualized education program” means a written statement for each student with a disability that documents the decisions of the ARD committee with respect to issues discussed at each committee meeting and includes:

1. A statement of the student’s present levels of academic achievement and functional performance;
2. A statement of measurable annual goals, including academic and functional goals;
3. A description of how the student’s progress toward the annual goals will be measured and when periodic reports on the progress of the student will be provided;

4. A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student;

5. A statement of the program modifications or supports for school personnel that will be provided for the student;

6. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in extracurricular and nonacademic activities;

7. The projected dates for initiation of services and modifications and the anticipated frequency, location, and duration of these services and modifications;

8. A statement of any individual appropriate and allowable accommodations that are necessary to measure the academic achievement and functional performance of the student on state or district-wide assessments;

9. If the ARD committee determines that the student must take an alternative assessment instead of a particular regular state or district-wide assessment, a statement of why the student cannot participate in the regular assessment and why the particular assessment selected is appropriate for the student;

10. If the ARD committee determines that a student is in need of ESY services, identification of the goals and objectives that will be addressed during ESY services;

11. Beginning not later than when a student reaches 14 years of age and updated annually thereafter, the ARD committee's consideration and decisions regarding the transition issues under 19 Administrative Code 89.1055(h) [see EHBAD];

12. Beginning not later than the first IEP to be in effect when the student is 16, or younger if determined appropriate by the ARD committee, and updated annually thereafter, a statement of appropriate measurable postsecondary goals and transition services needed to assist the student in reaching those goals [see EHBAD];

13. Beginning not later than one year before the student reaches the age of 17, a statement that the student has been informed of the rights that will transfer to the student upon reaching the age of majority;

14. The date of the meeting;

15. The name, position, and signature of each member participating in the meeting; and

16. An indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD committee.

20 U.S.C. 1414(d); 34 C.F.R. 300.320; Education Code 29.005(b-1), .011; 19 TAC 89.1055

Content of the IEP

Goals

To be considered a measurable annual goal under 34 C.F.R. 300.320(a)(2), a goal must include the components of a timeframe, condition, behavior, and criterion. While at least one measurable annual goal is required, the number of annual goals will be determined by the ARD committee after examination of the student's present levels of academic achievement and functional performance and areas of need.

Annual goals are also required in the following circumstances:

1. When the content of a subject/course is modified, whether the content is taught in a general or special education setting, in order to address how the content is modified; and

2. When a student is removed from the general education setting for a scheduled period of time but the content of the subject/course is not modified (e.g., a student who is progressing on enrolled grade level curriculum but requires a more restrictive environment for a period of time due to behavioral concerns).

Benchmarks

Short-term objectives/benchmarks, used as intermediary steps or milestones toward accomplishing an annual goal, may be included in a measurable annual goal. Short-term objectives/benchmarks:

1. Must be included in an annual goal if the ARD committee has determined that a student will not participate in the general state assessment; and

2. Regardless of whether the objectives/benchmarks are related to a student not participating in the general state assessment, cannot be used as the criterion to indicate mastery of the annual goal.

Assessments

The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of state assessment instruments [see EKB], or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments.

If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the following requirements must be met.

1. The IEP must include a statement explaining:
    a. Why the student cannot participate in the general assessment; and
    b. Why the particular alternate assessment selected is appropriate for the student, and
2. TEA's alternate assessment participation requirements form, if one is made available to districts, must be included in the student's IEP to document the statement required under this provision.

Extended School Year

If the ARD committee determines that the student is in need of ESY services, as described in 19 Administrative Code 89.1065 [see EHBA], then the IEP must identify which of the goals and objectives in the IEP will be addressed during ESY services.

19 TAC 89.1055(b)-(e)

Parent-Directed Services for Students Receiving Special Education

Unless the district first verifies that an account has been assigned under Education Code 29.045, the ARD committee of a student approved for participation in the supplemental services or a supplemental instructional materials program shall provide to the student's parent at an ARD committee meeting for the student:

1. Information regarding the types of supplemental services or supplemental instructional materials available under the program and provided by agency-approved providers for which an account maintained under Education Code 29.042(b) for the student may be used; and
2. Instructions regarding accessing the account.

Education Code 29.048

A district shall notify families of their eligibility for the program and, unless the district has verified that a parent has already received or applied for a program grant, shall provide the following at the student's ARD committee meeting: instructions and resources on accessing the online accounts, including the application window established by TEA, and information about the types of goods and services that are available through the program grant.

A student's ARD committee may not consider a student's current or anticipated eligibility for any materials or services that may be

provided under these provisions when developing or revising a student's IEP, when determining a student's educational setting, or in the provision of a free appropriate public education.

19 TAC 102.1601(j)-(k)

Behavioral Intervention Plan

The ARD committee may determine that a behavior improvement plan or a behavioral intervention plan is appropriate for a student for whom the committee has developed an IEP. *Education Code 29.005(g)*

If the committee makes that determination, the behavior improvement plan or behavioral intervention plan shall be included as part of the student's IEP and provided to each teacher with responsibility for educating the student.

If a behavior improvement plan or a behavioral intervention plan is included as part of a student's IEP, the ARD committee shall review the plan at least annually, and more frequently if appropriate, to address:

1. Changes in a student's circumstances that may impact the student's behavior, such as:
    a. The placement of the student in a different educational setting;
    b. An increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;
    c. A pattern of unexcused absences; or
    d. An unauthorized, unsupervised departure from an educational setting; or
2. The safety of the student or others.

19 TAC 89.1055(j); Education Code 29.005(h)

Translation of IEP into Primary Language

If the primary language of the child's parent is a language other than English, a district shall provide a written or audiotaped copy of the student's IEP translated into Spanish. If the parent's native language is other than Spanish or English, a district shall make a good faith effort to provide a written or audiotaped copy of the student's IEP translated into the parent's primary language. *Education Code 29.005(d)*

A written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a

comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

An audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

If a parent's native language is not a written language, the district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

Written Copy

Under 34 C.F.R. 300.322(f), a district must give a parent a written copy of the student's IEP at no cost to the parent. A district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language as provided above.

19 TAC 89.1055(r)

Dyslexia or a Related Disorder

For students identified with the specific learning disability of dyslexia or a related disorder eligible under 19 Administrative Code 89.1040(c)(9), the IEP must also be developed and implemented in accordance with the requirements under 19 Administrative Code 74.28 [see EHB]. *19 TAC 89.1055(i)*

Autism/Pervasive Developmental Disorder

For students with autism eligible under 19 Administrative Code 89.1040(c)(1) (relating to Eligibility Criteria), the strategies described in this provision must be considered, at least annually based on peer-reviewed, research-based educational programming practices to the extent practicable, and, when needed, addressed in the IEP:

1. Extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on data collected related to behavior, social skills, communication, academics, and self-help skills);

2. Daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule

changes, such as changes involving substitute teachers and pep rallies);

3. In-home training and community-based training or viable alternatives that assist the student with the acquisition of social, behavioral, communication, and self-help skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);

4. Positive behavior support strategies based on relevant information (for example: antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings and is implemented and reviewed);

5. Beginning at any age, futures planning for integrated learning and training, living, work, community, and educational environments that considers skills necessary to function in current and postsecondary environments, including self determination and self-advocacy skills;

6. Parent/family training and support, provided by qualified personnel with experience in autism, that, for example;

    a. Provides a family with skills necessary for a student to succeed in the home/community setting;

    b. Includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and

    c. Facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);

7. Suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

a. Adaptive behavior evaluation results;

b. Behavioral accommodation needs across settings; and

c. Transitions within the school day;

8. Communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);

9. Social skills supports and strategies based on social skills assessment/curriculum and provided across settings (e.g., peer-based instruction and intervention, video modeling, social narratives, and role playing);

10. Professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and

11. Teaching strategies based on peer-reviewed, research-based practices for students with autism (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

If the ARD committee determines that services are not needed in one or more of the areas in 1-11 above, the IEP shall include a statement reflecting that decision and the basis upon which the determination was made.

19 TAC 89.1055(g)-(h)

Visual Impairment, Deaf or Hard of Hearing, or Deaf-Blind

For a student from birth through two years of age with a visual impairment or who is deaf or hard of hearing, an individualized family services plan meeting must be held in place of an ARD committee meeting in accordance with the memorandum of understanding between TEA and the Texas Health and Human Services Commission. For students three years of age and older, a district must develop an IEP. *19 TAC 89.1050(b)*

Requirements for Students with Visual Impairments

For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan must also meet the requirements of Education Code 30.002(e). *19 TAC 89.1055(f)*

If a district provides special education services to students with visual impairments, it shall have written procedures as required in Education Code 30.002(c)(9) (staff access to resources). *19 TAC 89.1075(c)*

Each child with a visual impairment must receive instruction in an expanded core curriculum required for children with visual impairments to succeed in classroom settings and to derive lasting, practical benefits from education, including instruction in compensatory skills such as braille and concept development, orientation and mobility, social interaction skills, career education, assistive technology, independent living skills, recreation and leisure enjoyment, self-determination, and sensory efficiency. *Education Code 30.0021(a)*

In developing an IEP for a child with a visual impairment, proficiency in reading and writing must be a significant indicator of the child's educational progress. The IEP must include instruction in braille and the use of braille unless the ARD committee documents a determination, based on an evaluation of the child's appropriate literacy media and literacy skills and the child's current and future instructional needs, that braille is not an appropriate literacy medium for the child. Braille instruction may be used in combination with other special education services appropriate to the needs of a child with a visual impairment and must be provided by a teacher certified to teach students with visual impairments.

A district shall provide each person assisting in the development of an IEP for a child with a visual impairment information describing the benefits of braille instruction.

Education Code 30.0021(c)-(e)

Collaborative Process

All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. The district must take all reasonable actions necessary to ensure that the parent understands the proceedings of the ARD committee meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is a language other than English. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

Ten-Day Recess

When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed 10 school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when:

1. The student's presence on campus represents a danger of physical harm to the student or others;
2. The student has committed an expellable offense; or
3. The student has committed an offense that may lead to placement in a disciplinary alternative education program. [See FOF]

These requirements do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

Failure to Reach Agreement

If a recess is implemented and the ARD committee still cannot reach mutual agreement, the district must implement the IEP it has determined to be appropriate for the student. Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.

The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:

1. The date of the meeting;
2. The name, position, and signature of each member participating in the meeting; and
3. An indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD committee

19 TAC 89.1055(p)-(q)

If the IEP is not developed by agreement, the written statement of the program must include the basis of the disagreement. *Education Code 29.005(c)*

Modification of Existing IEP

Changes to the IEP may be made either by the entire ARD committee or by amending the IEP by agreement, rather than redrafting the entire IEP.

After the annual IEP meeting for a school year, the parent and district may agree not to convene an IEP meeting for the purposes of

making changes to the IEP and instead may develop a written document to amend or modify the child's current IEP.

Upon request, a parent shall be provided with a revised copy of the IEP with amendments incorporated.

To the extent possible, a district shall encourage the consolidation of reevaluation meetings for the child and other ARD meetings for the child.

20 U.S.C. 1414(d)(3)(D)-(F); 34 C.F.R. 300.324(a)(4)-(6)

Eligibility Folder

A district must maintain an eligibility folder for each student receiving special education and related services, in addition to the student's cumulative record. The eligibility folder must include, but will not be limited to, copies of referral data; documentation of notices and consents; evaluation reports and supporting data; ARD committee reports; and the student's IEPs and supporting data. *19 TAC 89.1075(a)*

Teacher Access to IEP

A district must ensure that each teacher who provides instruction to a student with a disability has access to relevant sections of the student's current IEP, is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and has an opportunity to request assistance regarding implementation of the student's IEP. *19 TAC 89.1075(d)*

Teacher Request to Review IEP

Each district shall develop a process to be used by a teacher who instructs a student with a disability in a general education classroom setting:

1. To request a review of the student's IEP;
2. To provide input in the development of the student's IEP;
3. That provides for a timely district response to the teacher's request; and
4. That provides for notification to the student's parent or legal guardian of that response.

Education Code 29.001(c)(6)(H); 19 TAC 89.1075(e)

Private School — District Placed

Student Receives IEP

If a district places a child with a disability in a private school or facility, or refers the child to a private school or facility, as a means of carrying out the requirements of the special education laws, the district shall ensure that the child is provided special education and related services, in accordance with an individualized education program (IEP), at no cost to the parents. *20 U.S.C. 1412(a)(10)(B)(i)*

Private School — Parent Placed

When a parentally placed child with a disability is referred to a district, the district shall convene an admission, review, and dismissal (ARD) committee to determine whether the district can offer the child a free appropriate public education (FAPE). If the district determines that it can offer FAPE, it is not responsible for providing educational services to the child, except that the district must develop and implement an individualized services plan (ISP). *19 TAC 89.1096(b)*

Offer of FAPE Rejected

Student Receives ISP

If a district made FAPE available to a child with a disability and the parents elected to place the child in a private school or facility, the district is not required to pay for the cost of education, including special education and related services. However, the district must develop and implement an ISP. *20 U.S.C. 1412(a)(10)(C)(i); 34 C.F.R. 300.148(a)*

FAPE Offered but Not Provided

Reimbursement

If the parents of a child with a disability, who previously received special education and related services under the authority of a district, enroll the child in a private school without the consent or referral by the district, a court or a hearing officer may require the district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the district had not made FAPE available to the child in a timely manner before the enrollment. This right of reimbursement is subject to the notice and other requirements set forth at 34 C.F.R. 300.148(d). *20 U.S.C. 1412(a)(10)(C)(ii); 34 C.F.R. 300.148(c)*

Home School Students

A home school student is considered a private school student, for purposes of a district's obligations under IDEA, if the home school provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress. *19 TAC 89.1096(a)(2)*

Individualized Services Plan (ISP)

Each parentally placed private school child with a disability who has been designated to receive services shall have an ISP that describes the specific special education and related services that a district will provide the child.

Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in

public schools. No parentally placed private school child has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

Decisions about the services that will be provided must be made in accordance with 34 C.F.R. 300.134(c) (consultation process) and 300.137(c) (attendance of private school representatives at services plan committee meetings). A district must make the final decisions with respect to the services to be provided.

34 C.F.R. 300.137, .138

Dual Enrollment

Parents shall have the right to "dual enroll" an eligible student age three or four in both the public school and a private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five, or until the student is eligible to attend a district's kindergarten program, whichever comes first, subject to the following:

1. The student's ARD committee shall develop an IEP designed to provide the student with FAPE in the least restrictive environment (LRE).
2. From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the LRE and the policies and procedures of the district.
3. The district shall be responsible for employing and supervising the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the district.

19 TAC 89.1096(c)

Responsible District

The district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

If the parents decline dual enrollment, but request an ISP, the district where the private school is located is responsible for development of the ISP for a student designated to receive services.

19 TAC 89.1096(c), (d)

Transportation

If a student has been placed by his or her parents in a private school or facility, a district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP. *19 TAC 89.1096(e)*

District Charter Schools

A district shall serve children with disabilities attending district charter schools in the same manner as it serves children with disabilities in its other schools and shall provide federal special education funds to those schools in the same manner as it provides those funds to its other schools. *20 U.S.C. 1413(a)(5); 34 C.F.R. 300.209(b)*

Residential Facilities

Identification of Students

A school must initiate Child Find outreach activities to locate, evaluate, and identify eligible students in any residential facility within its boundaries. If a student is eligible, a district must provide the required special education and related services to the student unless, after contacting the facility to offer those services to eligible students with disabilities, the facility can demonstrate that the services are provided by another educational program provider, such as a charter school, approved nonpublic school, or a facility operated private school. However, the district shall, at minimum, contact the facility at least twice per year to conduct Child Find activities and to offer services to eligible students with disabilities.

Residential facility refers to a facility defined by Education Code, 5.001(8), which includes any person, facility, or entity that provides 24-hour custody or care of a person residing in the facility for detention, treatment, foster care, or any noneducational purpose.

19 TAC 89.1001(c)

District Placements

Day Program

A district may contract with a nonpublic or nondistrict operated day program provider in accordance with the requirements in 19 Administrative Code 89.104.

Residential Placement

The commissioner shall set minimum standards for and develop and update as necessary a list of approved public or private facilities, institutions, agencies, or businesses inside or outside of this state that a school district may contract with for the provision of services to students with disabilities in a residential or day placement program. Each contract must be approved by the commissioner. A district seeking to place a student in a residential or day placement program that is not on the list developed by the commissioner must submit an application for approval to the commissioner in accordance with Education Code 29.008(a) and (a-1). *Education Code 29.008(a), (a-2)*

If placement in a public or private residential program is necessary to provide special education and related services, the program, including non-medical care and room and board, must be at no cost to the parents. *34 C.F.R. 300.104*

If a district contracts for education services rather than providing the services itself, it shall oversee the implementation of the student's IEP and shall annually reevaluate the appropriateness of the arrangement. The reevaluation must include standards and expectations that must be met to reintegrate the student to the general education setting. *Education Code 29.008(d)*

Notification

Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in a nonpublic residential program, a district must electronically submit to the Texas Education Agency (TEA) notice of and information regarding the placement in accordance with submission procedures specified by TEA. *19 TAC 89.1092(c)*

Grant for Community-Based Support Services

The commissioner shall adopt rules establishing procedures and criteria for the allocation of grants to students who are eligible and the students' families for the provision of non-educational community-based support services. A grant may be awarded only to a student with a disability who is placed by the student's ARD committee in a residential program or a day placement program and is at risk of being placed in a residential program.

A district shall notify the parent of an eligible student of the availability of grants for community-based support services and designate a campus or district staff member to assist families of eligible students in accessing the grants.

Education Code 29.013(a), (b), (d)

School for the Blind and Visually Impaired and School for the Deaf

A district shall share the cost of education (excluding the summer program) for each of its students enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf.

Before considering the student's educational placement for special education services, a district shall provide each parent of a student with visual or auditory impairments the following written information regarding the Texas School for the Deaf or Texas School for the Blind and Visually Impaired:

1. The availability of programs offered.
2. The eligibility and admissions requirements.

3. The student's rights to admission and to appeal admission decisions.

Education Code 30.003(a), .004(a); 19 TAC 89.62

A student's ARD committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with the provisions at 19 Administrative Code 89.1085 and .1090. *19 TAC 89.1085, .1090*

Adult Prisons

If a child with a disability is convicted as an adult under state law and incarcerated in an adult prison, the child's ARD committee may modify the child's IEP or placement, notwithstanding the LRE requirements, if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. Federal requirements pertaining to participation of students with disabilities in general assessments;

2. Requirements concerning transition planning and transition services, if the children's eligibility will end, because of their age, before they will be released from prison.

20 U.S.C. 1414(d)(7)

Table of Contents

Parental Consent Not Required 2
Video Surveillance of Special Education Settings 2
Classroom or Other Setting 2
Definitions 2
Administrative Coordinator 3
Authorized Requestors 4
Video Camera Coverage 4
Written Notice 5
Retention Period 5
Gifts, Grants, and Donations 5
No Waiver of Immunity 6
No Monitoring 6
Confidentiality 6
District Policy 7
Governmental Record 10
Operation of Camera 10
Exclusions 10
Dispute Resolution 10
Denial of Request 11
Extension of Time 14

Parental Consent Not Required

An employee or contractor of a district is not required to obtain the consent of a child's parent before the employee or contractor may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used for a purpose related to the promotion of student safety under Education Code 29.022. *Education Code 26.009(b)*

Video Surveillance of Special Education Settings

In order to promote student safety, on receipt of an authorized written request, a district shall provide equipment, including a video camera, to the campus in the district specified in the request.

Classroom or Other Setting

A campus that receives equipment shall place, operate, and maintain one or more video cameras in special education classrooms and other special education settings, provided that:

1. A campus that receives equipment as a result of the request by a parent or staff member is required to place equipment only in classrooms or settings in which the parent's child is in regular attendance or to which the staff member is assigned, as applicable; and

2. A campus that receives equipment as a result of the request by a board of trustees, principal, or assistant principal is required to place equipment only in classrooms or settings identified by the requestor, if the requestor limits the request to specific classrooms or settings subject to Education Code 29.022.

Education Code 29.022(a)

Definitions

“Incident” means an event or circumstance that:

Incident

1. Involves alleged “abuse” or “neglect,” as described in Family Code 261.001, of a student by a staff member of the district or alleged “physical abuse” or “sexual abuse,” as described in Family Code 261.410, of a student by another student; and

2. Allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under Education Code 29.022 and 19 Administrative Code 103.1301 is conducted.

Other Special Education Setting

“Other special education setting” means a classroom on a separate campus (i.e., a campus that serves only students who receive special education and related services) of a district — including a room attached to the classroom or setting used for time-out — in which a majority of the students in regular attendance are provided special education and related services, are assigned to the setting for at least 50 percent of the instructional day, and have one of the fol-

lowing instructional arrangements/settings described in the student attendance accounting handbook:

1. Residential care and treatment facility—separate campus; or

2. Off home campus—separate campus.

Parent "Parent" means a person described in Education Code 26.002, whose child receives special education and related services in one or more self-contained classrooms or other special education settings. "Parent" also means a student who receives special education and related services in one or more self-contained classrooms or other special education settings and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Family Code, Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

School Business Day "School business day" means a day that campus or district administrative offices are open.

Special Education Classroom or Other Special Education Setting "Special education classroom or other special education setting" means a classroom or setting primarily used for delivering special education services to students who spend on average less than 50 percent of an instructional day in a general education classroom or setting.

Staff Member "Staff member" means a teacher, a related service provider, a paraprofessional, a counselor, or an educational aide assigned to work in the special education classroom or other special education setting.

Time-out "Time-out" has the meaning assigned by Education Code 37.0021.

Video Camera "Video camera" means a video surveillance camera with audio recording capabilities.

Video Equipment "Video equipment" means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by Education Code 29.022 and 19 Administrative Code 103.1301. "Video equipment" also means any technology and equipment needed to store and access video recordings as required.

19 TAC 103.1301(b); Education Code 29.022

Administrative Coordinator Each district shall designate an administrator at the primary administrative office of the district with responsibility for coordinating the provision of equipment to schools and campuses. *Education Code 29.022(a-2)*

Authorized Requestors

The following people may request in writing that equipment be provided to a campus at which one or more children receive special education services in a qualifying classroom or setting:

1. A parent of a child who receives special education services for the campus at which the child receives those services;
2. The board of trustees for one or more specified campuses;
3. The principal or assistant principal for their campus; and
4. A staff member assigned to work with one or more children receiving special education services for the campus at which the staff member works.

Education Code 29.022(a-1)

Processing the Request

A written request must be submitted and acted on as follows:

1. A parent, staff member, or assistant principal must submit a request to the principal or the principal's designee of the campus addressed in the request, and the principal or designee must provide a copy of the request to the district’s designated administrator;
2. A principal must submit a request by the principal to the district’s designated administrator; and
3. A board of trustees must submit a request to the district’s designated administrator, and the administrator must provide a copy of the request to the principal or the principal's designee of the campus addressed in the request.

A campus shall operate and maintain the camera in the classroom or setting as long as the classroom or setting continues to satisfy these requirements, for the remainder of the school year in which the campus received the request, unless the requestor withdraws the request in writing.

Education Code 29.022(a-3)-(b)

Video Camera Coverage

The video cameras must be capable of:

1. Covering all areas of the classroom or setting, including a room attached to the classroom or setting used for time-out; and
2. Recording audio from all areas of the classroom or setting, including a room attached to the classroom or setting used for time-out.

The inside of a bathroom or any area in the classroom or other special education setting in which a student's clothes are changed may not be visually monitored, except for incidental coverage of a minor portion of a bathroom or changing area because of the lay-out of the classroom or setting.

Education Code 29.022(c)-(c-1)

Written Notice

Before a campus activates a video camera in a classroom or special education setting, the campus shall provide written notice of the placement to all campus staff and to the parents of each student attending class or engaging in school activities in the classroom or setting.

If for any reason a campus will discontinue operation of a video camera during a school year, not later than the fifth school day before the date the operation of the video camera will be discontinued, the campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue unless requested by a person eligible to make a request. Not later than the 10th school day before the end of each school year, the campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue during the following school year unless a person eligible to make a request for the next school year submits a new request.

Education Code 29.022(b), (d)

Retention Period

A district shall retain video recorded from a video camera for at least three months after the date the video was recorded.

If a person requests to view a video recording from a video camera, a district must retain the recording from the date of receipt of the request until the person has viewed the recording and a determination has been made as to whether the recording documents an alleged incident. If the recording documents an alleged incident, the district or campus shall retain the recording until the alleged incident has been resolved, including the exhaustion of all appeals.

Education Code 29.022(e)-(e-1)

Gifts, Grants, and Donations

A district may solicit and accept gifts, grants, and donations from any person to implement the requirements of Education Code 29.022 and 19 Administrative Code 103.1301. A district is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement these requirements. *19 TAC 103.1301(d)*

No Waiver of Immunity

The requirements described by Education Code 29.022 do not:

1. Waive any immunity from liability of a district, or of district officers or employees; or
2. Create any liability for a cause of action against a district or against district officers or employees.

No Monitoring

A district may not:

1. Allow regular or continual monitoring of video recorded under Education Code 29.022; or
2. Use video for teacher evaluation or for any other purpose other than the promotion of safety of students receiving special education services.

Education Code 29.022(g)-(h)

Confidentiality

A video recording of a student made under this provision is confidential and may not be released or viewed except as provided below.

Limited Release

A district shall release a recording for viewing by:

1. An employee who is involved in an alleged incident that is documented by the recording and has been reported to the district, on request of the employee;
2. A parent of a student who is involved in an alleged incident that is documented by the recording and has been reported to the district or campus, on request of the parent;
3. Appropriate Department of Family and Protective Services (DFPS) personnel as part of an investigation of alleged or suspected abuse or neglect of a child under Family Code 261.406;
4. A peace officer, a school nurse, a district administrator trained in de-escalation and restraint techniques as provided by commissioners rule, or a human resources staff member designated by the board in response to a report of an alleged incident or an investigation of district personnel or a report of alleged abuse committed by a student; or
5. Appropriate agency or State Board for Educator Certification personnel or agents as part of an investigation.

A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment or the re-

tention of video recordings who incidentally views a video recording does not violate these confidentiality provisions.

Education Code 29.022(i)-(i-1); 19 TAC 103.1301(h)-(i)

Duty to Report

If a person described by item 4 or 5, above, views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Family Code Chapter 261, the person must submit a report to the Texas Department of Family and Protective Services or other authority in accordance with the local policy adopted under 19 Administrative Code 61.1051 (Reporting Child Abuse and Neglect) and Family Code Chapter 261.

Note: 19 Administrative Code 61.1051 was repealed and the requirements were recodified at 19 Administrative Code 103.1401. [See FFG]

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19 TAC 103.1301(j); Education Code 29.022(j)

Use in Disciplinary Actions Against District Personnel

If a person described by items 3, 4, or 5, above, views the recording and believes that it documents a possible violation of district or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district to the extent not limited by the Family Educational Rights and Privacy Act (FERPA) or other law. A recording believed to document a possible violation of district policy relating to the neglect or abuse of a student may be used in a disciplinary action against district personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording. A recording believed to document a possible violation of district policy relating to the neglect or abuse of a student must be released for viewing by the district employee who is the subject of the disciplinary action at the request of the employee. *19 TAC 103.1301(k)*

Federal Law / FERPA

19 Administrative Code 103.1301(j) (child abuse reporting) and (k) (disciplinary actions against personnel) do not limit the access of a student's parent to a record regarding the student under FERPA or other law. To the extent any provisions in Education Code 29.022 and 19 Administrative Code 103.1301 conflict with FERPA or other federal law, federal law prevails. *19 TAC 103.1301(l)*

District Policy

A district must adopt written policies relating to the placement, operation, and maintenance of video cameras under Education Code 29.022 and 19 Administrative Code 103.1301. At a minimum, the policies must include:

1. A statement that video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings;

2. Information on how a person may appeal an action by the district that the person believes to be in violation of this section or a policy adopted in accordance with this section, including the appeal and expedited review processes under 19 Administrative Code 103.1303 (Commissioner's Review of Actions Concerning Video Cameras in Special Education Settings) and the appeals process under Education Code 7.057;

3. A requirement that the district provide a response to a request made under this section not later than the seventh school business day after receipt of the request by the person to whom it must be submitted under Education Code 29.022(a-3) (at Limited Release, above) that authorizes the request or states the reason for denying the request;

4. Except as provided by item 6 of this provision, a requirement that a campus begin operation of a video camera in compliance with this provision not later than the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the request is authorized unless the Texas Education Agency (TEA) grants an extension of time;

5. A provision permitting the parent of a student whose admission, review, and dismissal (ARD) committee has determined that the student's placement for the following school year will be in a classroom or other special education setting in which a video camera may be placed under this section to make a request for the video camera by the later of:

    a. The date on which the current school year ends; or

    b. The 10th school business day after the date of the placement determination by the ARD committee;

6. A requirement that, if a request is made by a parent in compliance with item 5 of this provision, unless TEA grants an extension of time, a campus begins operation of a video camera in compliance with this provision not later than the later of:

    a. The 10th school day of the fall semester; or

    b. The 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the date the request is made;

7. The procedures for requesting video surveillance and the procedures for responding to a request for video surveillance;

8. The procedures for providing advanced written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting that video and audio surveillance will be conducted or cease in the classroom or setting, including procedures for notice, in compliance with Education Code 29.022(b), of the opportunity to request continued video and audio surveillance if video and audio surveillance will otherwise cease;

9. A requirement that video cameras be operated at all times during the instructional day when one or more students are present in a self-contained classroom or other special education setting in which video cameras are placed;

10. A statement regarding the personnel who will have access to video equipment or video recordings for purposes of operating and maintaining the equipment or recordings;

11. A requirement that a campus continue to operate and maintain any video camera placed in a self-contained classroom or other special education setting for as long as the classroom or setting continues to satisfy the requirements in Education Code 29.022(a), for the remainder of the school year in which the campus received the request, unless the requester withdraws the request in writing;

12. A requirement that video cameras placed in a self-contained classroom or other special education setting be capable of recording video and audio of all areas of the classroom or setting, except that no visual monitoring of bathrooms and areas in which a student's clothes are changed may occur. Incidental visual coverage of the inside of a bathroom or any area of the classroom or other special education setting in which a student's clothes are changed is permitted only to the extent that such coverage is the result of the layout of the classroom or setting. Audio recording of the inside of a bathroom or any area of the classroom or other special education setting in which a student's clothes are changed is required;

13. A statement that video recordings must be retained for at least three months after the date the video was recorded and that video recordings will be maintained in accordance with the requirements of Education Code 29.022(e-1), when applicable;

14. A statement that the regular or continual monitoring of video is prohibited and that video recordings must not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety;

15. At the district's discretion, a requirement that campuses post a notice at the entrance of any self-contained classroom or other special education setting in which video cameras are placed stating that video and audio surveillance are conducted in the classroom or setting;

16. The procedures for reporting an allegation to the district that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under Education Code 29.022 and 19 Administrative Code 103.1301 is conducted;

17. The local grievance procedures for filing a complaint alleging violations of Education Code 29.022, and/or 19 Administrative Code 103.1301; and

18. A statement that video recordings made under Education Code 29.022 and 19 Administrative Code 103.1301 are confidential and a description of the limited circumstances under which the recordings may be viewed.

19 TAC 103.1301(g)

Governmental Record

A video recording under this section is a governmental record only for purposes of Penal Code 37.10.

Operation of Camera

These provisions apply to the placement, operation, and maintenance of a video camera in a special education classroom or other special education setting during the regular school year and extended school year services.

A video camera placed under this section is not required to be in operation for the time during which students are not present in the classroom or other special education setting.

Education Code 29.022(s)-(t)

Exclusions

A district is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. *19 TAC 103.1301(c)*

Dispute Resolution

The special education dispute resolution procedures in 34 Code of Federal Regulations 300.151-.153 and 300.504-.515 do not apply to complaints alleging that a district has failed to comply with Education Code 29.022 and 19 Administrative Code 103.1301. Complaints alleging violations of those sections must be addressed

through the district's local grievance procedures or other dispute resolution channels. *19 TAC 103.1301(e)*

Denial of Request

The following standards and procedures apply to a denial of a request for placement of a video camera under Education Code 29.022(a), or to the denial of a request to release a video or to view a video made under Education Code 29.022(i) or (l)(2).

Exhaustion of Administrative Remedies

Once a request for placement of a video camera or a request to release a video is administratively denied, the requester must exhaust administrative remedies through the district's grievance process even if the requester opts for the expedited review process. However, a district, parent, staff member, or administrator may request an expedited review even before the local remedies are exhausted.

After local remedies are exhausted by filing a grievance with the board and obtaining a board determination, the requester may appeal the denial to the commissioner of education under Education Code 7.057 by filing a petition for review.

Proper Request

In a case where there is a denial of a request for the placement of a video camera, the commissioner will determine whether the person requesting placement is a person allowed to request placement under Education Code 29.022(a-1) (see Limited Release, above) and whether the requester made a proper request under Education Code 29.022(a-3) (see Processing the Request, above).

Cost

The commissioner will not consider the cost to the district of installing cameras or releasing video.

Release Determination

In a case where there is a denial of a request to release a video, the commissioner will determine whether the requester is a person allowed to receive a video under Education Code 29.022(i) (described at Limited Release, above).

Timelines for Petition for Review

The following timelines are established for filing a petition for review:

1. A petition for review shall be filed with the commissioner within 10 calendar days of the decision of the board denying the request being first communicated to the requester or requester's counsel, whichever occurs first. The petition for review shall be made in accordance with 19 Administrative Code 157.1073(c) (hearings brought under Education Code 7.057) and may include a request for expedited review.

2. The district's answer and local record shall comply with 19 Administrative Code 157.1052(b) and (c) and 19 Administrative Code 157.1073(d) and shall be filed with the commis-

sioner within 10 calendar days of the district receiving notification from the commissioner of the appeal.

3. The procedures specified in 19 Administrative Code 157.1059; .1061; and .1073(e)-(h), (j), and (k) apply to a case brought to the commissioner under this section.

Expedited Review

A request for expedited review is governed by the following.

1. The expedited review process is designed to allow a requester to promptly receive a preliminary judgment from the commissioner as to a decision to deny a request for the installation of cameras or a decision to deny a request to release a video while at the same time respecting the school grievance process. The expedited review process does not apply to a request to only view a video. Invoking the expedited review process results in a prompt initial determination. However, the final commissioner's determination is to be based on a substantial evidence review of the district's grievance record. This allows for a full record to be developed at the district level and does not require the requester and the district to make an evidentiary record before TEA in Austin, Texas. Because the requirements of Education Code 7.057 are met when the board's decision is heard by the commissioner, an appeal to district court is allowed under Education Code 7.057(d). Education Code 29.022 does not by itself allow an appeal to district court.

2. A district, parent, staff member, or administrator may request an expedited review. Any request for an expedited review shall include the names, telephone numbers, and addresses of all interested parties to the request. “Interested parties” are all persons who brought the grievance, all persons who have testified or provided written statements as part of the grievance process, and the district. The request for expedited review shall specify whether the district denied a request for the placement of a video camera or the district denied a request to release a video and briefly describe why that decision is either correct or incorrect.

3. A request for expedited review shall be filed with the commissioner no earlier than 14 business days after a request for placement of a video camera or a request to release a video is administratively denied under Education Code 29.022(i) or (l)(2) (see Limited Release and Process, above), and no later than the fifth business day after a board resolves a grievance as to a request for placement of a video camera or a request to release a video. A request for expedited review shall be filed with the commissioner electronically as provided on

TEA's Division of Hearings and Appeals website or by U.S. Mail, facsimile, hand-delivery, or by a commercial delivery service.

4. Whenever an interested party files a document with the commissioner, with the exception of the request for expedited review, the interested party shall send the same document to all other interested parties by the same method that the document was sent to the commissioner. Hand-delivery of the document by the next day may be substituted for service by facsimile delivery.

5. If a request for expedited review is timely filed, the commissioner will establish a briefing schedule and will send to all interested parties a notice that an expedited review has been filed, which will include relevant statutes and rules. Any interested party who knows of any additional interested parties who have not been notified will promptly inform the commissioner in writing.

6. All briefing shall clearly state the facts relied upon. Documents relevant to the issues presented may be attached to a brief. All briefing shall provide the reasons why the commissioner should or should not grant the request for expedited review. Citations to statutes, rules, commissioner decisions, and case law are important to identify the legal basis for the claims made.

7. All interested parties who are in favor of granting the request for expedited review shall file briefing at the time specified for the requester of the expedited review.

8. All interested parties who are opposed to granting the request for expedited review shall file briefing at the same time.

9. Briefing is not limited to the issues specifically raised in the pleadings in the case. However, no new arguments may be raised in the reply briefs. Reply briefs may contain new citations to the record and legal authority as to issues previously raised.

10. A preliminary judgment shall be issued based on the briefing of the interested parties. The preliminary judgment will be sent to the requestor, the district, and all interested parties. If it is determined that a district is not likely to prevail on the issue of a request for the placement of video cameras or the issue of a request to view a video under full review, the district will fully comply with Education Code 29.022.

11. After a preliminary judgment is made, a final judgment will be made in accordance with the procedures set forth in 19 Administrative Code 103.1303(b)(1)-(5) (the Denial of Request Review process).

19 TAC 103.1303(b)

Extension of Time

A request by a district for an extension of time to begin the operation of a video camera under Education Code 29.022 shall be made and decided using the following procedures.

Request

Any request by a district for an extension of time to begin the operation of a video camera shall be filed with the commissioner prior to the 45th school business day after a request to begin operating a video camera is received. However, a district should request an extension of time as soon as it determines that an extension of time should be filed.

A request for an extension of time to begin the operation of a video camera shall specify why an extension of time should be granted. The request shall include affidavits supporting any factual claims made in the request and reference any legal authority as to why the request should be granted. The request may include a request for expedited review. The request shall name the individual who requested the installation of cameras and provide the individual's address and telephone number. Immediately following the individual's address and telephone number there shall appear in bold type: "You have been identified as the individual who requested the operation of a video camera that is the subject of this request to the commissioner of education to extend the statutory timeline. You may, but are not required to, participate in the proceedings before the commissioner concerning the school district's request for an extension of time. It is entirely up to you whether and to what extent you wish to participate in these proceedings. The procedures governing these proceedings are found at 19 Texas Administrative Code 103.1303(c) and Texas Education Code 29.022."

A request for an extension of time to begin the operation of a video camera shall list the names, telephone numbers, and addresses of all interested parties to the request. All interested parties include all parents of students in the classroom or other special education setting for which a video camera has been requested and all staff who provided services in a classroom for which a video camera has been requested.

Filing Documents

All documents in a case shall be filed with the Division of Hearings and Appeals, Texas Education Agency, 1701 N. Congress Ave., Austin, Texas 78701, facsimile number (512) 475-3662. Documents shall be filed electronically as provided on the division's

website or by mail, delivery, or facsimile. All documents must be actually received by the Division of Hearings and Appeals by the date specified in this section. The mailbox rule does not apply to filings in a case filed under this subsection. Electronic filing is strongly encouraged.

All filings in a case shall be sent to the district, the individual who initially requested the installation of the cameras, and all interested parties who have filed a request to receive documents filed in the case by the same method as the request is filed with the commissioner. Due to the requirements of FERPA, the names, telephone numbers, and addresses of parents and other publicly identifiable student information may not be given to the interested parties. The copies of the filings sent to interested parties shall be redacted to remove all personally identifiable student information.

Filing Responses

Any response to a request for an extension of time to begin the operation of a video camera shall be filed with the commissioner by an interested party within 10 calendar days of the filing of the request. If no response to the request is timely filed, the commissioner shall issue a final decision within 20 calendar days of the filing of the request.

A response to a request for an extension of time to begin the operation of a video camera shall specify why an extension of time should or should not be granted. The response shall include affidavits concerning any factual claims made in the request and reference any legal authority as to why the request should or should not be granted. The response may include a request for expedited review.

Expedited Review

A request for expedited review must be filed with the commissioner within 10 calendar days of the filing of the request for an extension of time to begin the operation of a video camera. If a request for expedited review is made, all interested parties shall be notified that they have been identified as interested parties in the request for an extension of time to begin the operation of a video camera. In particular, the interested parties will be informed that it is their choice whether to participate in the proceedings before the commissioner, that it is entirely up to them to determine to what extent they wish to participate in the proceedings, that the procedures governing these proceedings are found in 19 Administrative Code 103.1303 and Education Code 29.022, and that upon their written request filed with the commissioner they will be sent all filings in this case.

If a request for an expedited review is not made, the commissioner shall issue a final decision within 45 calendar days of the filing of the request for an extension of time to begin the operation of a

video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

If a request for expedited review is made, the following procedures shall be followed:

1. Any reply by the district to any response to the request shall be filed with the commissioner within 25 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.
2. A preliminary judgment shall be made by the commissioner within 35 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.
3. Any interested party or the district may file objections to the preliminary judgment within 40 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.
4. Any reply to an objection to a preliminary judgment must be filed within 45 calendar days of the filing of a request for an extension of time to begin the operation of a video camera.
5. The commissioner shall issue a final decision within 55 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

Commissioner Consideration

In making either a preliminary judgment or a final judgment under this subsection, the commissioner will consider whether granting the requested extension is reasonable considering all factors, including contracting statutes, architectural and structural issues, and the difference in costs to the district if a moderate extension of time is granted.

No Appeal

A commissioner's final decision under this provision is not subject to appeal.

19 TAC 103.1303(c)

Note: Unless otherwise noted, the terms “video recording,” “video surveillance,” and “video monitoring” shall also include any associated audio recordings. In addition, the term “classroom” shall also include other special education settings subject to video and audio recording required by law.

To promote student safety, the District shall comply with requests for video and audio monitoring of certain special education classrooms as required by law. Regular or continual monitoring of video recordings shall be prohibited. Video recordings shall not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety.

The Superintendent is responsible for coordinating the provision of equipment to campuses in compliance with the law.

The Superintendent shall ensure that administrative regulations are developed to implement this policy.

Requests

For Following Year

A parent of a student receiving special education services and whose placement for the following school year will be in a special education classroom eligible for video surveillance may request in writing that a video camera be placed in the classroom by the end of the current school year or by the 10th business day after the student’s admission, review, and dismissal (ARD) committee determines the student’s placement, whichever is later. If such a request is made, the campus shall begin operation of the camera by the deadlines in law.

For Current Year

Written requests from a parent, assistant principal, principal, staff member, or the Board shall be submitted and processed in accordance with the procedures in law.

Response

As required by law, the District shall provide a response to the requester not later than the seventh business day after receipt of the request.

Notice

Before a camera is activated, the principal shall provide advance written notice to staff on the campus and to parents of the students assigned to or engaging in school activities in the classroom that video and audio surveillance will be conducted in the classroom.

Installation and Operation

The classroom subject to the request shall begin operation of video surveillance not later than the time frames required in law, except when the District is granted an extension of time.

When the District has installed video cameras in a classroom as required by law, the District shall operate the cameras during the

instructional day at all times when one or more students are in the classroom. For purposes of this policy, the instructional day shall be defined as the portion of a school day during which instruction is taking place in the classroom.

For the school year in which a campus receives a request for video and audio surveillance, the campus shall continue to operate and maintain any video cameras placed in the classroom for as long as the classroom continues to satisfy the requirements in Education Code 29.022(a). However, the campus may discontinue operation of the video camera during the year if the requester withdraws the request in writing and no request is submitted to continue the surveillance. Before a camera is deactivated, the principal shall provide advance written notice to staff on the campus and to parents of the students assigned to or engaging in school activities in the classroom that video and audio surveillance will be discontinued in the classroom and of the opportunity to request continued video and audio surveillance.

Video cameras must be capable of recording video and audio of all areas of the classroom, including a room attached to the classroom used for time out as defined by law. No visual monitoring, other than incidental coverage, shall be conducted of the inside of a bathroom or other area used for changing a student's clothes.

The District shall post notice at the entrance to a classroom in which video cameras are placed stating that video and audio surveillance is conducted in that classroom.

Retention of Recordings

Video recordings shall be retained for at least three months after the date of the recording but may be retained for a longer period in accordance with the District's records management program, or as required by law. [See CPC]

Confidentiality of Recordings

Video recordings made in accordance with this policy shall be confidential and shall only be released or viewed by the individuals and in the limited circumstances permitted by law. The following individuals shall have authority to view video recordings to the extent permitted by the Family Educational Rights and Privacy Act (FERPA):

1. A District employee or a parent of a student who is involved in an alleged incident documented by a recording and reported to the District;
2. Appropriate Department of Family and Protective Services (DFPS) personnel as part of an investigation of alleged abuse or neglect of a child;

3. A peace officer, school nurse, District administrator trained in de-escalation and restraint techniques, or human resource staff member in response to a report of an alleged incident or an investigation of an employee or a report of alleged abuse committed by a student; and

4. Appropriate Texas Education Agency or State Board for Educator Certification personnel or their agents as part of an investigation.

For purposes of this policy, the term “human resource staff member” shall include the Superintendent, a principal, an assistant principal or other campus administrator, and any supervisory position within the District’s human resources office. If an individual listed in items 2-4, above, believes that a recording shows a violation of District policy or campus procedures, the individual may allow access to the recording by appropriate legal and human resources personnel designated by the District for the purpose of determining whether a policy or procedure has been violated.

Any person who suspects that child abuse or neglect has occurred shall report this suspicion as required by law and District policy. [See FFG]

Reporting an Incident

A person alleging that an incident, as defined by law, has occurred in a classroom in which video surveillance is conducted shall file a report on the form provided by the District with the principal as soon as possible after the person suspects the alleged incident. If possible, an incident report form shall be filed within 24 hours of the facts giving rise to the allegation. The principal shall promptly view, or direct an authorized individual to view, the video surveillance footage to identify the relevant portion of the recording. No later than 10 District business days after the report is filed, the principal or designee shall respond by notifying the person whether the alleged incident was recorded in the District’s video surveillance footage and shall initiate other steps as required by law, District policy, or local procedures.

Complaints

Complaints related to video and audio recordings under this policy shall be filed in accordance with DGBA, FNG, or GF, as applicable. A complainant who is dissatisfied with the outcome of the District’s complaint process may appeal in writing to the commissioner of education in accordance with Education Code 7.057 and 19 Administrative Code 103.1303. A parent, staff member, or District administrator may request an expedited review in accordance with 19 Administrative Code 103.1303.

Designing and Implementing Services

A district shall use student performance data from state basic skills assessment instruments and achievement tests to design and implement appropriate compensatory, intensive, or accelerated instructional services for students in the district's schools that enable the students to perform at grade level at the conclusion of the next regular school term. *Education Code 29.081(a)*

[See EHBCA for information regarding acceleration instruction and accelerated learning committees.]

Intensive Program of Instruction

A district shall offer an intensive program of instruction to a student who does not perform satisfactorily on a state assessment instrument or is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade 9, as determined by the district.

State Assessments

The program shall be designed to:

1. Enable the student to:
    a. To the extent practicable, perform at the student's grade level at the conclusion of the next regular school term; or
    b. Attain a standard of annual growth specified by a district and reported by the district to the Texas Education Agency (TEA); and
2. If applicable, carry out the purposes of Education Code 28.0211. [See EIE]

Students Receiving Special Education Services

For a student in a special education program who does not perform satisfactorily on an assessment instrument administered under Education Code 39.023(a), (b), or (c), the student's admission, review, and dismissal committee shall design the program to:

1. Enable the student to attain a standard of annual growth on the basis of the student's individualized education program (IEP); and
2. If applicable, carry out the purposes of Education Code 28.0211. [See EIE]

Use of State Funds

A district shall use funds appropriated by the legislature for an intensive program of instruction to plan and implement intensive instruction and other activities aimed at helping a student satisfy state and local high school graduation requirements.

No Cause of Action

A district's determination of the appropriateness of an intensive program of instruction for a student is final and does not create a cause of action.

Education Code 28.0213

Compensatory Education Allotment

Census Block

On a schedule determined by the commissioner of education and in accordance with Education Code 48.104, each district shall report to the agency the census block group in which each student enrolled in the district who is educationally disadvantaged resides. *Education Code 48.104(i)*

Dropout Prevention Strategies

A district with a high dropout rate, as determined by the commissioner, shall submit a plan to the commissioner describing the manner in which the district intends to use its compensatory education allotment for developing and implementing research-based strategies for dropout prevention.

A district shall submit the plan not later than December 1 of each school year preceding the school year in which the district will receive the compensatory education allotment to which the plan applies.

A district may not spend or obligate more than 25 percent of the district's compensatory education allotment unless the commissioner approves the plan.

A district's plan shall:

1. Design a dropout recovery plan that includes career and technology education courses or technology applications courses that lead to industry or career certification;
2. Integrate into the dropout recovery plan research-based strategies to assist students in becoming able academically to pursue postsecondary education, including:
    a. High-quality, college readiness instruction with strong academic and social supports;
    b. Secondary to postsecondary bridging that builds college readiness skills, provides a plan for college completion, and ensures transition counseling; and
    c. Information concerning appropriate supports available in the first year of postsecondary enrollment to ensure postsecondary persistence and success, to the extent funds are available for the purpose; and
3. Plan to offer advanced academic and transition opportunities, including dual credit courses and college preparatory courses, such as advanced placement courses.

A district may enter into a partnership with a public junior college in accordance with Education Code 29.402 [see GNC] in order to fulfill a plan.

Any program designed to fulfill a plan must comply with the requirements of Education Code 29.081(e) and (f).

Education Code 29.918

Reporting

A district shall report financial information relating to expenditure of the state compensatory education allotment under the Foundation School Program to TEA, according to standards for financial accounting provided in 19 Administrative Code 109.41 (relating to *Financial Accountability System Resource Guide*). Costs charged to state compensatory education shall be for programs and services that supplement the regular education program. *19 TAC 109.25(a)*

A district shall ensure that supplemental direct costs and personnel attributed to compensatory education and accelerated instruction are identified in district and/or campus improvement plans at the summary level for financial units or campuses. A district shall maintain documentation that supports the attribution of supplemental costs and personnel to compensatory education. A district must also maintain sufficient documentation supporting the appropriate identification of students in at-risk situations, under criteria established in Education Code 29.081 [see At-Risk Student, below]. *19 TAC 109.25(b)*

Educationally Disadvantaged Students

Student Eligibility

To be considered educationally disadvantaged in order to be counted to generate the compensatory education allotment pursuant to Education Code 48.104, a student must meet the income requirements for eligibility under the National School Lunch Program (NSLP), authorized by 42 U.S.C. 1751, et seq.

Districts may use the following approved methods for the purpose of receiving the compensatory education allotment pursuant to Education Code 48.104:

1. Parent certification, where the parent or guardian asserts meeting the income requirements for eligibility;
2. Direct certification, where the process by which eligible children are certified for free meals without the need for a household application based on household participation in one or more federal assistance programs; or
3. Direct verification, where public records are used to verify a student's eligibility for free or reduced-price meals when verification of student eligibility is required.

19 TAC 61.1027(a)

At-Risk Student

“Student at risk of dropping out of school” includes each student who is under 26 years of age and who:

1. Except as provided by TEA rule or if retained in prekindergarten under Education Code 28.02124 [see EIE], was not advanced from one grade level to the next for one or more school years, unless the student did not advance from prekindergarten or kindergarten to the next grade level only as a result of the request of the student's parent;
2. If the student is in grades 7-12, did not maintain an average equivalent to 70 on a scale of 100 in two or more subjects in the foundation curriculum during a semester in the preceding or current school year, or is not maintaining such an average in two or more subjects in the foundation curriculum in the current semester;
3. Did not perform satisfactorily on a state assessment instrument and who has not in the previous or current school year subsequently performed on that instrument or another appropriate instrument at a level equal to at least 110 percent of the level of satisfactory performance on that instrument;
4. If the student is in prekindergarten, kindergarten, or grades 1-3, did not perform satisfactorily on a readiness test or assessment instrument administered during the current school year;
5. Is pregnant or is a parent;
6. Has been placed in a DAEP in accordance with Education Code 37.006 during the preceding or current school year;
7. Has been expelled in accordance with Education Code 37.007 during the preceding or current school year;
8. Is currently on parole, probation, deferred prosecution, or other conditional release;
9. Was previously reported through the Public Education Information Management System (PEIMS) to have dropped out of school;
10. Is an emergent bilingual student, as defined by Section 29.052;
11. Is in the custody or care of the Department of Family and Protective Services or has, during the current school year, been referred to the department by a school official, officer of the juvenile court, or law enforcement official;
12. Is homeless [see FD];

13. Resided in the preceding school year or resides in the current school year in a residential placement facility in a district, including a detention facility, substance abuse treatment facility, emergency shelter, psychiatric hospital, halfway house, cottage home operation, specialized child-care home, or general residential operation;

14. Has been incarcerated, or has a parent or guardian who has been incarcerated, within the lifetime of the student, in a penal institution as defined by Penal Code 1.07;

15. Is enrolled in a district or a campus that is designated as a dropout recovery school under Education Code 39.0548;

16. Is a chronically absent student as defined by Education Code 48.009; or

17. Is required to attend school, is not exempted from compulsory school attendance, and fails to attend school without excuse for 10 or more days or parts of days within a six-month period in the same school year.

Education Code 29.081(d)(1)

Regardless of the student's age, a student who participates in an adult education program provided under the adult high school charter school program is considered a "student at risk of dropping out of high school." *Education Code 29.081(d)(2)*

Local Eligibility Criteria

In addition to students described above, a student who satisfies local eligibility criteria adopted by a board may receive compensatory education services. The number of students receiving services under local eligibility criteria during a school year may not exceed 10 percent of the number of students described above who received services from the district during the preceding school year. *Education Code 29.081(g)*

Dropout Recovery Education Programs

A district may use a private or public community-based dropout recovery education program or education management organization to provide alternative education programs for students at risk of dropping out of school. The program may be offered in person at a campus, remotely, or through a hybrid of in-person and remote instruction. An in-person campus-based dropout recovery education program must meet the criteria set forth at Education Code 29.081(e-1)(1)-(5). A remote or hybrid dropout recovery education program must meet the criteria set forth at Education Code 29.081(e-2)(1)-(9).

A student who successfully completes a course offered through a dropout recovery education program shall be included in a district's average daily attendance for funding purposes.

Education Code 29.081(e)-(e-2), (f)

Operation

A dropout recovery education program may be operated only by an entity that is accredited by the agency or a regional accrediting agency, must offer or provide referrals for mental health services to students enrolled in the program, and may not market directly to students enrolled in a traditional education program.

A district may operate one campus-based dropout recovery education program for all students in the district.

Referral

A district administrator or school counselor may refer a student to a dropout recovery education program if the administrator or counselor determines that enrollment in the program could prevent the student from dropping out of school.

Required Website Report

Each year, a district shall post on the district's website a report on measurable outcomes for each dropout recovery education program offered by the district. The report must include the percentage of students enrolled in the program during the preceding school year who attained each of the following outcomes:

1. Transfer to a traditional education program;
2. Successful completion of the program;
3. Dual credit; or
4. A credential of value.

Education Code 29.081(e-3)-(e-6)

Communities in Schools

An elementary or secondary school receiving funding under Education Code 33.156 shall participate in the Communities in Schools (CIS) program if the number of students enrolled in the school who are at risk of dropping out of school is equal to at least 10 percent of the number of students in average daily attendance at the school, as determined by TEA. *Education Code 33.157*

Optional Extended Year Program

A district may set aside an amount from the district's compensatory education allotment or may apply to the agency for funding of an extended year program. *Education Code 29.082(a); 19 TAC 105.1001*

Optional Flexible Year Program

A district may provide an optional flexible year program (OFYP) for students who did not or are not likely to perform successfully on state assessment instruments or who would not otherwise be pro-

moted to the next grade level. *Education Code 29.0821; 19 TAC 129.1029*

Optional Flexible School Day Program

Notwithstanding Education Code 25.081 or 25.082, a district may apply to the commissioner to provide a flexible school day program (OFSDP) for students who:

1. Have dropped out of school or are at risk of dropping out of school as defined by Education Code 29.081;
2. Attend a campus that is implementing an innovative redesign of the campus or an early college high school under a plan approved by the commissioner; or
3. As a result of attendance requirements under Education Code 25.092, will be denied credit for one or more classes in which the students have been enrolled.

Education Code 29.0822

A district may apply to the commissioner to provide an OFSDP for students, in accordance with 19 Administrative Code 129.1027.

A board must approve the application. The board must include the OFSDP as an item on the regular agenda for a board meeting in compliance with 19 Administrative Code 129.1027(h)(2) before applying to operate an OFSDP. The application shall include the information described in 19 Administrative Code 129.1027.

19 TAC 129.1027(c)

Tutorial Services

A district may provide tutorial services at district schools. If a district provides tutorial services, it shall require a student whose grade in a subject for a reporting period is lower than the equivalent of 70 on a scale of 100 to attend tutorials. [See EC for provisions on loss of class time.]

A district may provide transportation services to accommodate students who are required to attend tutorials and who are eligible for regular transportation.

Education Code 29.084

Basic Skills Programs

A district may apply to the commissioner for funding of basic skills programs for students in grade 9 who are at risk of not earning sufficient credit or who have not earned sufficient credit to advance to grade 10 and who fail to meet minimum skills levels established by the commissioner.

With the consent of a student's parent or guardian, a district may assign a student to the basic skills program.

A basic skills program may not exceed 210 instructional days and must meet the requirements set forth at Education Code 29.086.

Education Code 29.086(a)

After-School and Summer Intensive Mathematics and Science Programs

A district may provide an intensive after-school program or an intensive program during the period that school is recessed for the summer to provide mathematics and science instruction to:

1. Students who are not performing at grade level in mathematics or science to assist those students in performing at grade level;
2. Students who are not performing successfully in a mathematics course or science course to assist those students in successfully completing the course; or
3. Other students as determined by the district.

Before providing a program, a board must adopt a policy for:

1. Determining student eligibility for participating in the program that:
    a. Prescribes the grade level or course a student must be enrolled in to be eligible; and
    b. Provides for considering teacher recommendations in determining eligibility;
2. Ensuring that parents of or persons standing in parental relation to eligible students are provided notice of the program;
3. Ensuring that eligible students are encouraged to attend the program;
4. Ensuring that the program is offered at one or more locations in the district that are easily accessible to eligible students; and
5. Measuring student progress on completion of the program.

Education Code 29.088, .090; 19 TAC 102.1041

Mentoring Services Program

A district may provide a mentoring services program to students at risk of dropping out of school. A board may arrange for any public or nonprofit community-based organization to come to the district's schools and implement the program.

A board shall obtain the consent of a student's parent or guardian before allowing the student to participate in the program.

Education Code 29.089

College Preparatory Courses

Each district shall partner with at least one institution of higher education to develop and provide courses in college preparatory mathematics and English language arts. The courses must be designed:

1. For students at the 12th grade level whose performance on:
    a. An end-of-course assessment instrument required under Education Code 39.023(c) does not meet college readiness standards; or
    b. Coursework, a college entrance examination, or an assessment instrument designated under Education Code 51.334 [Texas Success Initiative (TSI) assessment] indicates that the student is not ready to perform entry-level college coursework; and
2. To prepare students for success in entry-level college courses.

A course must be provided on the campus of the high school offering the course or through distance learning or as an online course provided through an institution of higher education with which the district partners.

Faculty

Appropriate faculty of each high school offering courses and appropriate faculty of each institution of higher education with which the district partners shall meet regularly as necessary to ensure that each course is aligned with college readiness expectations.

Notice

Each district shall provide a notice to each eligible student and the student's parent or guardian regarding the benefits of enrolling in a course.

Credit Earned

A student who successfully completes an English language arts course may use the credit earned toward satisfying the advanced English language arts curriculum requirement for the foundation high school program under Education Code 28.025(b-1)(1). A student who successfully completes a mathematics course may use the credit earned in the course toward satisfying an advanced mathematics curriculum requirement under Education Code 28.025 after completion of the mathematics curriculum requirements for the foundation high school program under Education Code 28.025(b-1)(2).

Dual Credit

A course may be offered for dual credit at the discretion of the institution of higher education with which a district partners. [See EHDD]

Instructional Materials	Each district, in consultation with each institution of higher education with which the district partners, shall develop or purchase instructional materials for a course consistent with Education Code Chapter 31. The instructional materials must include technology resources that enhance the effectiveness of the course and draw on established best practices. *Education Code 28.014*
End-of-Course Exam	A student enrolled in a college preparatory mathematics or English language arts course under Education Code 28.014 who satisfies the TSI college readiness benchmarks on an assessment instrument administered at the end of the course satisfies the requirements concerning and is exempt from the administration of the Algebra I or the English I and English II end-of-course assessment instruments, as applicable, as prescribed by Education Code 39.023(c) [see EKB], even if the student did not perform satisfactorily on a previous administration of the applicable end-of-course assessment instrument. A student who fails to perform satisfactorily on the assessment instrument may retake that assessment instrument or may take the appropriate end-of-course assessment instrument. *Education Code 39.025(a-1)*

To ensure that each student achieves at least satisfactory performance on each state assessment instrument, a district shall ensure that the district's curricular and instructional systems provide instruction to all students that is consistently aligned with the essential knowledge and skills for the applicable subject area and grade level; and strategically and timely addresses deficiencies in the prerequisite essential knowledge and skills for the applicable subject area and grade level. *Education Code 28.0211(a)*

Accelerated Instruction

Each time a student fails to perform satisfactorily on an assessment instrument administered in grades 3-8 or on an end-of-course assessment instrument, other than an assessment instrument developed or adopted based on alternative academic achievement standards, the district the student attends shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and, subject to the limitations at Exceptions, below, either:

1. Allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under the local optional teacher designation system [see DEAA] for the subsequent school year in the applicable subject area; or

2. Provide the student supplemental instruction under Education Code 28.0211(a-4) [see Supplemental Instruction Requirements, below].

The assessments in this provision include a state assessment instrument administered under Education Code 39.023(a) [see EKB] in third through eighth grade or an end-of-course assessment instrument. The assessments also include a Spanish assessment for emergent bilingual students but exclude an assessment instrument developed or adopted based on alternative academic achievement standards.

19 TAC 104.1001; Education Code 28.0211(a-1)

Exceptions

Accelerated instruction requirements do not apply to a student who is retained at a grade level for the school year in which those requirements would otherwise apply.

A district may not be required to provide supplemental instruction to a student in more than two subject areas per school year. If the district would otherwise be required to provide supplemental instruction to a student in more than two subject areas for a school year, the district shall prioritize providing supplemental instruction to the student in mathematics and reading, or Algebra I, English I, or English II, as applicable, for that school year.

Education Code 28.0211(a-7)-(a-8)

A district is not required to provide accelerated instruction to a student who, instead of being administered an assessment instrument specified above, was administered a substitute assessment instrument in accordance with other law or Texas Education Agency (TEA) rule authorizing the use of the substitute assessment instrument for purposes of satisfying the requirements concerning the applicable assessment instrument. *Education Code 28.0211(a-10)*

Off-Campus Arrangements

If a student who attends school in a homebound or other off-campus instructional arrangement, including at a residential treatment campus or state hospital, is unable to participate in an accelerated instruction program due to the student's condition, the district may determine that the student be provided the accelerated instruction when the student attends school in an on-campus instructional setting. If the student's condition prevents the student from attending school in an on-campus instructional setting for the school year during which the accelerated instruction is required to be provided to the student, the district is not required to provide the accelerated instruction to the student for that school year. *Education Code 28.0211(i-1)*

Participation Requirements

Accelerated instruction may require a student to participate before or after normal school hours and may include participation at times of the year outside normal school operations. *19 TAC 104.1001(c)*

In providing accelerated instruction, a district may not remove a student, except under circumstances for which a student enrolled in the same grade level who is not receiving accelerated instruction would be removed, from:

1. Instruction in the foundation curriculum and enrichment curriculum adopted under Education Code 28.002 for the grade level in which the student is enrolled [see EHA series]; or
2. Recess or other physical activity that is available to other students enrolled in the same grade level.

Education Code 28.0211(a-3)

The foundation curriculum includes English language arts, mathematics, science, and social studies. Courses in the enrichment curriculum include languages other than English; health, with emphasis on physical health, proper nutrition, and exercise; mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision making; suicide prevention; physical education; fine arts; career and technical education; technology applications; religious literature; and personal financial literacy.

In the event that a school week is three or less instructional days, the school is exempt from meeting the requirement of meeting once per week for accelerated instruction.

19 TAC 104.1001(c)(1)

Supplemental Instruction Requirements

If a district receives funding under Education Code 29.0881 or Education Code 48.104 [see EHBC], the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Div. M, Pub. L. No. 116-260), or the American Rescue Plan Act of 2021 (Pub. L. No. 117-2), then supplemental instruction provided by a district must:

1. Include targeted instruction in the essential knowledge and skills for the applicable grade levels and subject area;
2. Be provided in addition to instruction normally provided to students in the grade level in which the student is enrolled;
3. Be provided during the subsequent summer or school year:
    a. To each student for no less than:
        (1) 15 hours; or
        (2) 30 hours for a student whose performance on the applicable assessment instrument was significantly below satisfactory, as below; and
    b. Unless the instruction is provided fully during summer, include instruction no less than once per week during the school year, except as otherwise provided by commissioner rule to account for school holidays or shortened school weeks;
4. Be designed to assist the student in achieving satisfactory performance in the applicable grade level and subject area;
5. Include effective instructional materials designed for supplemental instruction;
6. Be provided to a student individually or in a group of no more than four students, unless the parent or guardian of each student in the group authorizes a larger group;
7. Be provided by a person with training in the applicable instructional materials for the supplemental instruction and under the oversight of the district; and
8. To the extent possible, be provided by one person for the entirety of the student's supplemental instruction period.

Education Code 28.0211(a-4); 19 TAC 104.1001

Significantly Below Satisfactory	A district shall provide students who fail to perform satisfactorily on an applicable state assessment instrument no less than 15 hours of supplemental instruction or no less than 30 hours of supplemental instruction for students who scored Low Did Not Meet Grade Level as indicated by state-provided district-level data files or failed to perform satisfactorily on any grade 3 assessment. *19 TAC 104.1001(d)*
Parent Choice	A parent or guardian of a student to whom supplemental instruction will be provided and who either was administered and failed to perform satisfactorily on an assessment instrument specified above or was administered a beginning-of-year assessment instrument aligned with the essential knowledge and skills for the applicable subject area, including a student to whom an accelerated education plan applies, may elect to modify or remove a requirement for that instruction under Education Code 28.0211(a-4) by submitting a written request to an administrator of the campus at which the student is enrolled. A district may not encourage or direct a parent or guardian to make an election under this provision that would allow the district to not provide supplemental instruction to the student or provide supplemental instruction in a group larger than authorized. *Education Code 28.0211(a-9)*
Transportation	A district shall provide students required to attend the accelerated programs described above with transportation to those programs if the programs occur outside of regular school hours, unless the district does not operate, or contract or agree with another entity to operate, a transportation system. *Education Code 28.0211(j)*
High-Impact Tutoring Providers	TEA shall approve high-impact tutoring providers for purposes of providing accelerated or supplemental instruction. In contracting with a high-impact tutoring provider approved by TEA, a district may use an outcomes-based contract. *Education Code 28.0211(a-15)-(a-16)*
Unlisted Service Provider	A district may use a service provider that is not on a list of service providers approved by TEA if the district can demonstrate to the commissioner that use of the service provider results in measurable improvement in student outcomes. *Education Code 28.0211(a-12)*
Optional Assessment	A school district that is required to provide to a student accelerated instruction or supplemental instruction is not required to provide additional instruction under either provision to the student based on the student's failure to perform satisfactorily on an assessment instrument administered as an optional assessment in the same sub-

ject area in which the district is required to provide the student the accelerated or supplemental instruction. *Education Code 28.0211(a-13)*

Notice to Parents

A district shall provide to the parent or guardian of a student who fails to perform satisfactorily on a state assessment instrument specified above notice that the student is not performing on grade level in the applicable subject area. The district must provide the notice at a parent-teacher conference or, if the district is unable to provide the notice at a parent-teacher conference, by another means. TEA shall develop and provide to districts a model notice in plain language for use under this provision. *Education Code 28.0211(a-14)*

In each instance in which a district is specifically required to provide notice or a written copy to a parent or guardian of a student, the district shall make a good faith effort to ensure that such notice or copy is provided either in person or by regular mail and that the notice or copy is clear and easy to understand and is written in English or the parent or guardian's native language. *Education Code 28.0211(h)*

Parent Request

A district shall establish a process allowing for the parent or guardian of a student who fails to perform satisfactorily a state assessment instrument under Education Code 28.0211(a-1) [see above] to make a request for district consideration that the student be assigned to a particular classroom teacher in the applicable subject area for the subsequent school year, if more than one classroom teacher is available. *Education Code 28.0211(a-5); 19 TAC 104.1001(g)*

Assessments Not Required

Education Code 28.0211 does not require the administration of a fifth or eighth grade assessment instrument in a subject under Education Code 39.023(a) to a student enrolled in the fifth or eighth grade, as applicable, if the student:

1. Is enrolled in a course in the subject intended for students above the student's grade level and will be administered an assessment instrument adopted or developed under Education Code 39.023(a) [see EKB] that aligns with the curriculum for the course in which the student is enrolled; or

2. Is enrolled in a course in the subject for which the student will receive high school academic credit and will be administered an end-of-course (EOC) assessment instrument [see EKB] for the course.

Notwithstanding any other provision of Education Code 28.0211, the student may not be denied promotion on the basis of failure to

perform satisfactorily on an assessment instrument not required to be administered to the student, nor may a student in grade 5 or grade 8 be denied promotion to the next grade on the basis of failure to perform satisfactorily on a reading or mathematics assessment instrument intended for use above the student's grade level.

Education Code 28.0211(o)-(p)

Students At Risk

A district shall provide accelerated instruction to an enrolled student who has taken an EOC assessment instrument and has not performed satisfactorily or who is at risk of dropping out of school [see EHBC].

A district shall offer before the next scheduled administration of the assessment instrument, without cost to the student, additional accelerated instruction to each student in any subject in which the student failed to perform satisfactorily on an end-of-course assessment instrument required for graduation.

A district that is required to provide accelerated instruction must separately budget sufficient funds for that purpose. [See CE]

A district shall evaluate the effectiveness of accelerated instruction programs and annually hold a public hearing to consider the results.

Education Code 29.081(b), (b-1), (b-2), (b-3), 39.025(b-1)

Effectiveness

A district shall evaluate and document the effectiveness of the accelerated instruction in reducing any disparity in performance on state assessment instruments or disparity in the rates of high school completion between students at risk of dropping out of school and all other district students. *Education Code 29.081(c)*

No Available Test Score

The superintendent of each district shall establish procedures to ensure that each eligible student who is absent or does not receive a test score for any test administration shall receive appropriate supplemental accelerated instruction as warranted on an individual student basis. This provision may not be used to excuse a student from appropriate accelerated instruction. *19 TAC 104.1001(b)(4)*

Accelerated Education Plan

For each student who does not perform satisfactorily on a state assessment instrument specified above for two or more consecutive school years in the same subject area, the district the student attends shall develop an accelerated education plan and provide the student at least 30 hours of supplemental instruction. *19 TAC 104.1001; Education Code 28.0211(b)*

Not later than the start of the subsequent school year, a district shall develop an accelerated education plan for the student that

provides the necessary accelerated instruction to enable the student to perform at the appropriate grade level or course by the conclusion of the school year.

The plan must:

1. Identify the reason the student did not perform satisfactorily on the applicable assessment instrument; and

2. Require the student to be provided with no less than 30 hours, or a greater number of hours if appropriate, of supplemental instruction for each consecutive school year in which the student does not perform satisfactorily on the assessment instrument in the applicable subject area.

The plan may require that, as appropriate to ensure the student performs satisfactorily on the assessment instrument in the applicable subject area at the next administration of the assessment instrument:

1. The district expand the times in which supplemental instruction is available to the student;

2. The student be assigned for the school year to a specific teacher who is better able to provide accelerated instruction; and

3. The district provide any necessary additional resources to the student.

The accelerated education plan must be documented in writing, and a copy must be provided to the student's parent or guardian.

During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the accelerated education plan.

The board shall adopt a policy consistent with the grievance procedure adopted under Education Code 26.011 [see FNG] to allow a parent to contest the content or implementation of an accelerated education plan.

Education Code 28.0211(f)-(f-3)

Parent Conference

A district shall make a good faith attempt to provide to the parent or guardian of a student to whom an accelerated education plan applies a parent-teacher conference with the student's primary teacher at the start and end of the subsequent school year.

At the conference, the district shall provide the student's parent or guardian with:

1. The notice required under Education Code 28.0211(a-14); and

2. An explanation of:

   a. The accelerated instruction to which the student is entitled under this provision, and

   b. The accelerated education plan that must be developed for the student and the manner in which the parent or guardian may participate in developing the plan.

Education Code 28.0211(b-1); 19 TAC 104.1001(e)

Classroom Assignment

Except as requested under Education Code 28.0211(a-5), a student for whom an accelerated instructional plan must be developed must be assigned, in each school year and subject covered by the accelerated education plan, to an appropriately certified teacher who meets all state and federal qualifications to teach that subject and grade.

In a manner consistent with federal law and notwithstanding any other law, the commissioner may waive the requirement regarding the assignment of a student to an appropriately certified classroom teacher on the request of a district.

Education Code 28.0211(n)-(n-1)

ARD Committee Review

The admission, review, and dismissal (ARD) committee of a student who does not perform satisfactorily on a state assessment instrument described above shall, at the student's next annual review meeting, review the student's participation and progress in, as applicable, accelerated instruction, supplemental instruction, or an accelerated education plan.

The student's parent may request, or the district may schedule, an additional committee meeting if a committee member believes that the student's individualized education program needs to be modified based on the accelerated instruction requirements. If the district refuses to convene a committee meeting requested by the student's parent, the district shall provide the parent with written notice explaining the reason the district refuses to convene the meeting.

Education Code 28.0211(i)

Repeating a High School Course

For courses taken for high school credit, a student who is required to repeat any course in which the student was enrolled in during the previous school year and who is eligible for accelerated instruction for the current school year is exempt from accelerated instruction requirements for that specific course if that course is retaken in

its entirety (i.e., to earn a full credit). However, a student who is participating in credit recovery is still required to receive accelerated instruction.

For the purpose of this provision, credit recovery means completing a certain number of assignments to satisfy the course requirements after failure or a certain number of seat hours after excessive absences.

19 TAC 104.1001(i)

Commissioner Waiver

The commissioner may waive the requirements regarding accelerated instruction for a district for each school year in which at least 60 percent of the students who received accelerated instruction during the school year immediately preceding the previous school year, including at least 60 percent of students whose performance on the applicable assessment instrument was significantly below satisfactory, as defined by commissioner rule, performed satisfactorily in the previous school year on the assessment instrument in each subject in which the student previously failed to perform satisfactorily. For purposes of determining whether a school district qualifies for a waiver, the commissioner shall:

1. If a student received accelerated instruction in more than one subject during the applicable school year, consider the student's performance on the assessment instrument in each subject separately from the student's performance on the assessment instrument for each other subject; and

2. By rule provide that a district may not qualify for a waiver if students who are receiving special education services or are educationally disadvantaged are overrepresented among the students in the district who received accelerated instruction during the school year immediately preceding the previous school year and did not perform satisfactorily in the previous school year on the assessment instrument in each applicable subject.

Education Code 28.0211(q); 19 TAC 104.1001(h)

Ratio Waiver

A district may provide accelerated instruction using a product on the Ratio Waiver List on the TEA website with information related to accelerated instruction. The 4:1 student-to-teacher ratio requirement above does not apply to a district using a listed product to provide accelerated instruction to its students.

The Ratio Waiver List consists of products that use an automated, computerized, or other augmented method for providing accelerated instruction under Education Code 28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group supplemen-

tal instruction, as appropriate for the applicable grade level and subject area and a student's academic deficiency.

A district shall:

1. Notify the parent or guardian of the use of a product on the Ratio Waiver List for providing the required accelerated instruction;
2. Ensure that the required hours of supplemental instruction are completed prior to the subsequent State of Texas Assessments of Academic Readiness (STAAR®) administration;
3. Use a product on the Ratio Waiver List remotely, regardless of primary mode of instruction (i.e., in-person, virtual, or hybrid) only if the district ensures that time spent by the student engaged in the product is aligned with approved product usage expectations documented by the district;
4. Adhere to the product usage fidelity requirements by product as approved by TEA to waive ratio requirements. A district not fulfilling usage fidelity with a product will be required to revert to the 4:1 ratio for supplemental instruction; and
5. Be responsible for contracting and funding the selected vendors included on the TEA list of approved vendors.

19 TAC 104.1001(g)

Table of Contents

Title III Requirements 2
Definitions 2
Alternative Methods 2
Certified Bilingual Program Teacher 2
Certified English as a Second Language Teacher 2
Dual Language Immersion Program 2
Emergent Bilingual 2
English as a Second Language Program 2
English Proficient Student 3
Exit 3
Language Proficiency Assessment Committee 3
Parent 3
Reclassification 3
District Responsibility 3
Identification of Emergent Bilingual Students 4
Language Proficiency Assessment Committees 4
Home Language Survey 5
English Language Proficiency Testing 5
Emergent Bilingual Classification 6
Parental Notice and Consent 6
Participation of Other Students 8
Students with Disabilities 8
Bilingual and ESL Programs 8
Exceptions and Waivers 9
Program Design 9
Dual Language Immersion Program 11
Facilities 13
Cooperation Among Districts 13
Documentation 13
Summer Program 13
Other Programs 14
Personnel 14
Emergent Bilingual Students and State Assessments 15
Program Exit 15
Post-Exit Monitoring and Reenrollment 15
Program Evaluation 16

Title III Requirements

A district that receives funds under Title III of the Elementary and Secondary Education Act shall comply with the statutory requirements regarding English learners and immigrant students. *20 U.S.C. 6801-7014*

A district that receives funds under Title I or Title III to provide a language instruction educational program shall, not later than 30 days after the beginning of the school year, inform the parents of an English learner identified for participation in such a program of the information required by 20 U.S.C. 6312(e)(3). *20 U.S.C. 6312(e)(3)*

Definitions

Alternative Methods

"Alternative methods" means a temporary instructional plan that meets the affective, linguistic, and cognitive needs of emergent bilingual (EB) students and equips the teacher under a bilingual exception or an English as a second language (ESL) waiver to align closely to the required bilingual or ESL program through the comprehensive professional development plan.

Certified Bilingual Program Teacher

"Certified bilingual program teacher" means a teacher holding bilingual certification and appropriately certified for the grade level and content area. The term "certified bilingual program teacher" is synonymous with the term "professional bilingual educator" used in Education Code 29.063.

Certified English as a Second Language Teacher

"Certified English as a second language teacher" means a teacher appropriately certified in ESL as well as for the grade level and content area. The term "certified English as a second language teacher" is synonymous with the term "professional transitional language educator" used in Education Code 29.063.

Dual Language Immersion Program

"Dual language immersion (DLI) program" means a state-approved bilingual program in accordance with Education Code 29.066 that uses English and a partner language. The two state-approved DLI program models are one-way DLI and two-way DLI.

Emergent Bilingual

"Emergent bilingual (EB)" means a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork in English. "Emergent bilingual" also means a student identified by the Language Proficiency Assessment Committee (LPAC) who is in the process of acquiring English and has another language as the student's home language. This term is interchangeable with English learner as used in federal regulations and replaces the term "limited English proficient student."

English as a Second Language Program

"English as a second language (ESL) program" means a special language program in accordance with Education Code, Chapter 29, Subchapter B, to include both content-based and pull-out pro-

	gram models. Another related term for an ESL program is “English as an additional language program.”
English Proficient Student	“English proficient student” means a former EB student who has met reclassification as English proficient by the LPAC.
Exit	“Exit” refers to the point when an EB student is reclassified as English proficient and ends bilingual or ESL program participation with LPAC recommendation and parental approval. The term “exit” is synonymous with the description in Education Code, Chapter 29, Subchapter B, of a student having been “transferred out” of bilingual or special language programming. For the purpose of meeting the goals of a DLI program, the LPAC recommends that the EB student is reclassified as English proficient but continues participation in the program to further develop biliteracy for the duration of the program for prekindergarten through grade 12.
Language Proficiency Assessment Committee	“Language Proficiency Assessment Committee” means a designated group of committee members as described in 19 Administrative Code 89.1220 (relating to Language Proficiency Assessment Committee) and Education Code 26.063 that ensures the appropriate identification, placement, assessment, services, reclassification, and monitoring of EB students. The LPAC also meets in conjunction with all other committees related to programs and services for which an EB student qualifies.
Parent	“Parent” includes the parent or legal guardian of the student in accordance with Education Code 29.052(2).
Reclassification	“Reclassification” means the process by which the LPAC determines that an EB student has met the appropriate criteria to be classified as English proficient, and the student enters year 1 of monitoring as indicated in the Texas Student Data System Public Education Information Management System. *Education Code 29.052; 19 TAC 89.1203(1), (3)-(4), (6), (8)-(9), (11), (13), (16), (19), (22)*

District Responsibility

Each district shall:

1. Identify EB students based on criteria established by the state;
2. Provide bilingual education, including bilingual and ESL programs as integral parts of the general program;
3. Seek appropriately certified teaching personnel to ensure that EB students are afforded full opportunity to master the essential knowledge and skills; and

4. Assess academic achievement and linguistic progress in accordance with Education Code Chapter 29, Subchapter B, to ensure accountability for EB students and the schools that serve them.

19 TAC 89.1201(a)

Identification of Emergent Bilingual Students

Within the first four weeks of the first day of school, the LPAC shall determine and report to the board the number of EB students on each campus and shall classify each student according to the language in which the student possesses primary proficiency. A board shall report that information to the Texas Education Agency (TEA) before November 1 each year. *Education Code 29.053(b)*

Language Proficiency Assessment Committees

A district shall by local board policy establish and operate one or more LPACs. The district shall have on file a policy and procedures for the selection, appointment, and orientation of members of the LPAC(s).

A district shall establish and operate a sufficient number of LPACs to enable them to discharge their duties within four calendar weeks of the enrollment of an EB student.

19 TAC 89.1220(a), (e)

Membership of LPAC

The LPAC shall include:

1. An appropriately certified bilingual educator (for students served through a bilingual program);
2. An appropriately certified ESL educator (for students served through an ESL program);
3. A parent of an (EB) student participating in a bilingual or ESL program; and
4. A campus administrator.

A district may add other members to the committee.

All required members of an LPAC must be present either in person or virtually to make individualized student decisions.

No parent serving on the LPAC shall be an employee of the district.

All members of the LPAC, including parents, shall be acting for the district and shall observe all laws and rules governing confidentiality of information concerning individual students. A district shall be responsible for the orientation of all members, including the parents, of the LPAC.

Meetings The LPAC may use alternative meeting methods, such as phone or video conferencing and the use of electronic signatures that adhere to district policy.

19 TAC 89.1220(b)-(d), (f); Education Code 29.063(a)-(b);

Duties The LPAC shall have the duties set forth at Education Code 29.063(c) and 19 Administrative Code 89.1220(g)-(i), (k), including duties to review information, classify students, notify parents, and monitor student academic progress.

Home Language Survey

For each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through grade 12, the TEA-developed home language survey shall be administered. This home language survey will serve as the original and only home language survey throughout the student's educational experience in Texas public schools.

The district shall:

1. Ensure that the student's parent understands the language used in the survey and its implications;
2. Require that the survey be signed by the student's parent for each student in prekindergarten through grade 8 or by the student in grades 9-12;
3. Ensure the student's parent is aware of the benefits of bilingual and ESL programs; and
4. Maintain the original copy of the survey in the student's permanent record and transfer it to any subsequent Texas public school districts in which the student enrolls.

If the response on the home language survey indicates that a language other than English is or was used for communication, the student shall be tested in accordance with 19 Administrative Code 89.1226 (Testing and Classification of Students).

If a parent determines an error was made when completing the original home language survey, the parent may request a correction only if the student has not yet been assessed for English proficiency; and corrections are made within two calendar weeks of the student's initial enrollment date in Texas public schools.

19 TAC 89.1215(a), (c), (e)

English Language Proficiency Testing

Within four calendar weeks of initial enrollment in a Texas public school, a student with a language other than English indicated on the home language survey shall be administered the state-approved English language proficiency test in accordance with 19 Ad-

ministrative Code 89.1226(c) and shall be identified as an EB student and recommended for placement into the required bilingual or ESL program in accordance with the testing and classification requirements in 19 Administrative Code 89.1226(f). *19 TAC 89.1226(b)*

Emergent Bilingual Classification

The LPAC may classify a student as EB if:

1. The student's ability in English is so limited or the student's disabilities are so severe that assessment procedures cannot be administered;
2. The student's score or relative degree of achievement on the TEA-approved English proficiency test is below the levels established by TEA as indicative of reasonable proficiency;
3. The student's primary language proficiency score as measured by a TEA-approved test is greater than the student's proficiency in English; or
4. The LPAC determines, based on other information, including a teacher evaluation, parental viewpoint, or student interview, that the student's primary language proficiency is greater than the student's proficiency in English or that the student is not reasonably proficient in English.

Education Code 29.056(c)

Parental Notice and Consent

Not later than the 10th day after the date of the student's classification as an EB student, the LPAC shall give written notice to the student's parent. *Education Code 29.056(d)*

The district shall notify the parent in English and in the parent's home language that their child has been identified as an EB student and recommended for placement in the required bilingual or ESL program using the TEA-developed identification and placement letter.

The parent shall be provided information describing the bilingual or ESL program recommended, its benefits and goals, and its being an integral part of the school program to ensure that the parent understands the purposes and content of the program and their parental rights.

The placement of a student in the bilingual or ESL program must be approved in writing by the student's parent or through allowable alternatives described in 19 Administrative Code 89.1220, in order to have the student included in the bilingual education allotment (BEA). The parent's approval shall be considered valid for the student's continued participation in the required bilingual or ESL pro-

gram until the student meets the reclassification criteria described in 19 Administrative Code 89.1226(i) (Testing and Classification of Students), the student graduates from high school, or a change occurs in program placement. A change between bilingual and ESL program placement requires new parental approval using the TEA-developed continuation of language program services letter.

If a parent denies program placement at any point, the TEA-developed parental denial of program services letter shall be used to ensure parents are informed of the implications of program denial, including understanding that the child will continue to be identified as an EB student and will continue to be assessed annually using the Texas English Language Proficiency Assessment System (TELPAS) until reclassification criteria have been met.

19 TAC 89.1240(a)

Pending completion of the identification process, receipt of LPAC documentation for transferring students, or parental approval of an identified EB student's placement into the bilingual education or ESL program recommended by the LPAC, a district shall place the student in the recommended program. Only EB students with parental approval for program participation will be included in the bilingual education allotment.

A district may place a student in or exit a student from a program without written approval of the student's parent if:

1. The student is 18 years of age or has had the disabilities of minority removed;

2. The parent provides approval through a phone conversation or email that is documented in writing and retained; or

3. An adult who the district recognizes as standing in parental relation to the student provides written approval. This may include a foster parent or employee of a state or local governmental agency with temporary possession or control of the student.

19 TAC 89.1220(j), (m)

Reclassification and Exit Approval

The district shall use the TEA-developed parent notification of reclassification and approval of program exit letter to give written notification to the student's parent of the student's reclassification as English proficient and acquire written approval for their exit from the bilingual or ESL program.

The district shall use the TEA-developed parent notification of reclassification and option to continue in a dual language immersion

program letter to give written notification to the student's parent of the student's reclassification as English proficient and acquire written approval for continued program participation as an English proficient student.

Students meeting reclassification criteria who have been recommended for exit by the LPAC may only exit the bilingual or ESL program with parental approval.

19 TAC 89.1240(b); Education Code 29.056(a)

Participation of Other Students

With the approval of a district and a student's parents, a student who is not LEP may also participate in a bilingual education program. *Education Code 29.058*

The number of participating non-EB students shall not exceed 40 percent of the number of students enrolled in those bilingual or ESL program models district-wide. *19 TAC 89.1233(c)*

Students with Disabilities

For students with disabilities, a district shall utilize the state's criteria for identification of EB students as described in 19 Administrative Code 89.1226(f) (relating to Testing and Classification of Students) and shall establish placement procedures that ensure that the placement recommendation by the LPAC, in conjunction with the admission, review, and dismissal (ARD) committee, in a bilingual or English as a second language program is not refused based on the student's disabling condition.

LPAC members shall meet in conjunction with ARD committee members to review progress and provide recommendations regarding the educational needs of each EB student who also qualifies for services in the district's special education program. [See EHBAB] *19 TAC 89.1230*

Bilingual and ESL Programs

Each district that has an enrollment of 20 or more students identified as EB students in any language classification in the same grade level district-wide shall offer a bilingual program for the EB students in prekindergarten through the elementary grades with that language classification. "Elementary grades" shall include prekindergarten through grade 5; grade 6 shall be included when clustered with elementary grades.

A district required to provide a bilingual program shall offer dual-language instruction (English and home or partner language) in prekindergarten through the elementary grades, using one of the four bilingual program models described in 19 Administrative Code 89.1210 (relating to Program Content and Design).

19 TAC 89.1205(a)-(b); Education Code 29.053(c)-(d)

A district shall provide an ESL program to all EB students for whom a district is not required to offer a bilingual program, regardless of the students' grade levels and home language, and regardless of the number of such students, except in cases where a district exercises the option to provide a bilingual education program that is not required by law [see below]. A district required to provide an ESL program shall provide an ESL program using one of the two models described in 19 Administrative Code 89.1210.*19 TAC 89.1205(c)-(d)*

A district is authorized to establish a bilingual program even if the district has fewer than 20 students identified as EB bilingual students in any language classification in the same grade level district-wide and at grade levels in which the bilingual program is not required under 19 Administrative Code 89.1205(a). If a district does operate such a program under this authorization, the district shall adhere to all program requirements in 19 Administrative Code 89.1210, .1227, .1228, and .1229. *19 TAC 89.1205(f)-(g)*

Exceptions and Waivers

A district shall comply with the requirements for bilingual exceptions and ESL waivers under 19 Administrative Code 89.1207. *Education Code 29.054; 19 TAC 89.1207*

TEA may require a district that is granted an exception to include in the district's Public Education Information Management System (PEIMS) report additional information specified by TEA and relating to alternative language education methods used by the district and classify alternative language education methods under the PEIMS report as specified by TEA. *Education Code 29.054(e)*

A district that is unable to employ a sufficient number of teachers, including part-time teachers, who meet the certification requirements for the bilingual and ESL programs shall apply on or before November 1 for an exception to the bilingual program or a waiver for the ESL program as provided in 19 Administrative Code 89.1207. *19 TAC 89.1245(b)*

Program Design

A district that is required to offer bilingual education through bilingual or ESL program models shall provide each EB student the opportunity to be enrolled in the required program at their grade level.

A district's bilingual and ESL program models shall comply with the program content and design requirements of 19 Administrative Code 89.1210. A district shall ensure ongoing collaboration between bilingual and ESL programs and the general education programs to provide equitable educational access for all learners.

19 TAC 89.1210(a)-(b)

EB students shall participate with their non-EB peers in general education classes provided in subjects such as art, music, and physical education. A district shall provide students enrolled in the program a meaningful opportunity to participate fully with other non-EB peers in all extracurricular activities. Elective courses included in the curriculum may be taught in a language other than English. *Education Code 29.055, .057(b); 19 TAC 89.1210(f)*

Bilingual Education Program Models

Bilingual education shall be implemented through at least one of the following program models:

1. Transitional bilingual/early exit;
2. Transitional bilingual/late exit;
3. Dual language immersion/one-way; or
4. Dual language immersion/two-way.

19 TAC 89.1210(c)

ESL Program Models

The ESL program shall be implemented through one of the following program models:

1. An ESL/content-based program model is an English acquisition program that serves students identified EB students through English instruction by a teacher appropriately certified in ESL under Education Code 29.061(c), using content-based language instruction in reading and language arts, mathematics, science, and social studies. The goal of content-based ESL is for program participants to attain full proficiency in English in order to participate equitably in school.
2. An ESL/pull-out program model is an English acquisition program that serves identified EB students through English instruction using content-based language instruction methods provided by an appropriately certified ESL teacher under Education Code 29.061(c), in reading and language arts in a pull-out or inclusionary delivery setting. The goal of ESL pull-out is for program participants to attain full proficiency in English in order to participate equitably in school.

19 TAC 89.1210(d)

Dual Language Immersion Program

A district may adopt a DLI program for students enrolled in elementary school grades. *Education Code 28.005(c), .0051(c)*

Implementation

Program implementation shall:

1. Begin at prekindergarten, kindergarten, or grade 1 as applicable, according to the district's earliest grade level provided;

2. Continue without interruption incrementally through the elementary grades;

3. Consider expansion to middle school and high school whenever possible; and

4. Include participation of former EB students who have reclassified as English proficient for the duration of the program.

19 TAC 89.1227(e)

Requirements

A DLI program model shall be a full-time program of academic instruction in the program's partner language and English for all program participants, emphasizing the participation of identified EB students. Access to the DLI program shall not be restricted based on race, creed, color, religious affiliation, age, or disability.

A DLI program shall meet the minimum requirements described in 19 Administrative Code 89.1227.

19 TAC 89.1227(b)

Two-Way DLI Program Enrollment

Student enrollment in a two-way DLI program model is optional for non-EB students. The program shall fully disclose candidate selection criteria and ensure that access to the program is not based on race, creed, color, religious affiliation, age, or disability. Additionally, identified and reclassified EB students and non-EB students shall not be restricted access to the two-way DLI program model based on any linguistic or academic achievement measures in the program's partner language or English.

A district implementing a two-way DLI program model shall develop a policy for enrollment and continuation for students in the program model. The policy must address:

1. Equitable access, including the program's intention to maintain a ratio of 50 percent EB students to 50 percent non-EB students and have no more than two-thirds speakers of the partner language to one-third speakers of English in each classroom;

2. Support of program benefits and goals as stated in 19 Administrative Code 89.1210 (Program Content and Design);

3. The district's commitment to providing equitable access to services for EB students and to ensuring continuity of program for all program participants;

4. The program's language allocation plan for the grade levels in which the program will be implemented; and

5. Expectations for students, families, and district and campus stakeholders.

19 TAC 89.1228(a)-(c)

A district implementing a two-way DLI program model shall obtain written parental approval as follows:

1. For EB students in accordance with 19 Administrative Code 89.1240; and

2. For non-EB students, through a district-developed process.

19 TAC 89.1228(d)

Two-Way DLI Program State Assessment

A district implementing a two-way DLI program model shall determine the appropriate assessment option for program participants as follows:

1. For EB students, the LPAC shall convene before the administration of the state criterion-referenced test each year to determine the appropriate assessment option for each EB student in accordance with 19 Administrative Code 89.1220(i) (Language Proficiency Assessment Committee).

2. For reclassified EB students and non-EB students, the appropriate assessment option for the administration of the state criterion-referenced test each year is determined by the LPAC or through a district-developed process.

19 TAC 89.1228(e)

School District Recognition

A district may recognize one or more of its campuses that implement an exceptional DLI program if the campus meets all of the following criteria. The school shall:

1. Meet the minimum requirements stated in 19 Administrative Code 89.1227;

2. Receive an acceptable performance rating in the state accountability system; and

3. Not have a bilingual and/or ESL program identified in any stage of intervention under the state's accountability system.

Student Recognition

An individual student participating in a DLI is eligible for local school district recognitions, including a performance acknowledgement in accordance with 19 Administrative Code 74.14. [See EIF]

19 TAC 89.1229

Facilities

Bilingual and ESL programs shall be located in public schools of the district with equitable access to all educational resources rather

than in separate facilities. A district may cluster the programs at designated facilities within the district. Recent immigrant EB students shall not remain enrolled in a newcomer center for longer than two years. *Education Code 29.057; 19 TAC 89.1235*

Cooperation Among Districts

A district may join with one or more other districts to provide the required bilingual education or special language programs. The availability of the programs shall be publicized throughout the districts involved.

A district may allow a nonresident EB student to enroll in or attend its bilingual education or special language programs if the student's district of residence does not provide an appropriate program. The tuition for the student shall be paid by the district in which the student resides.

Education Code 29.059; 19 TAC 89.1205(e)

Documentation

A student's permanent record shall contain the documentation items required by 19 Administrative Code 89.1220(l). Documentation in a student's permanent record shall be forwarded in the same manner as other student records to another school district in which the student enrolls. *19 TAC 89.1220(l)*

For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the original home language survey and LPAC documentation as described in 19 Administrative Code 89.1220(l), as applicable. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the student's original home language survey shall be made. *19 TAC 89.1215(d)*

Summer Program

If a district is required to offer a bilingual education or special language program, it shall offer a voluntary summer school program for EB children who will be eligible for admission to kindergarten or first grade at the beginning of the next school year.

A school that operates on a semester system shall offer the program during the period school is recessed for the summer and for one-half day for eight weeks or on a similar schedule approved by the board. A school that operates on any other system shall offer 120 hours of instruction on a schedule approved by the board.

The program must be an intensive bilingual education or special language program that meets the standards set by TEA, and the student/teacher ratio may not exceed 18:1. A district shall comply with the requirements of 19 Administrative Code 89.1250 in providing such a program.

Other Programs

A district may establish on a full- or part-time basis other summer school, extended day, or extended week bilingual education or special language programs for EB students and may join with other districts in establishing such programs.

The programs required or authorized by Education Code 29.060 may not be a substitute for programs required to be provided during the regular school year.

Education Code 29.060; 19 TAC 89.1250

Personnel

Teachers assigned to a bilingual education program using one of the following program models must be appropriately certified in bilingual education:

1. Transitional bilingual/early exit program model; or
2. Transitional bilingual/late exit program model.

Education Code 29.061(b)

Teachers assigned to a bilingual education program using a dual language immersion/one-way or two-way program model must be appropriately certified for:

1. Bilingual education for the component of the program provided in a language other than English; and
2. Bilingual education or English as a second language for the component of the program provided in English.

A district that provides a bilingual education program using a dual language immersion/one-way or two-way program model may assign a teacher certified for the language other than English component of the program and a different teacher certified for the English language component.

Education Code 29.061(b-1)-(b-2)

A district shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual and ESL programs. A district that is unable to secure a sufficient number of appropriately certified bilingual education and/or ESL teachers to provide the required programs may request activation of the appropriate permits in accordance with 19 Administrative Code Chapter 230. *19 TAC 89.1245(a); Education Code 29.061(c)*

A district that is unable to provide the required bilingual and/or ESL program because of an insufficient number of appropriately certified teachers shall request from the commissioner of education an exception to the bilingual program and/or a waiver for the ESL program and the approval of temporary alternative methods. EB stu-

dents with parental approval for program participation under a bilingual exception or an ESL waiver will be included in the bilingual education allotment (BEA) designated for temporary alternative methods. The approval of a bilingual exception and/or an ESL waiver application shall be valid only during the school year for which it was granted, which includes summer school. The bilingual exception and/or ESL waiver application shall be submitted by November 1 and shall adhere to the requirements in 19 Administrative Code 89.1207. [See Exceptions and Waivers, above] *19 TAC 89.1207(a)-(d); Education Code 29.054*

Emergent Bilingual Students and State Assessments

In kindergarten-grade 12, an EB student shall participate in the state assessment in accordance with commissioner's rules at 19 Administrative Code Chapter 101, Subchapter AA. [See EKBA]

Program Exit

A district may transfer an EB student out of a bilingual education or special language program for the first time or a subsequent time if the student is able to participate equally in a regular all-English instructional program as determined by:

1. TEA-approved tests administered at the end of each school year to determine the extent to which the student has developed oral and written language proficiency and specific language skills in English;

2. Satisfactory performance on the reading assessment instrument under Education Code 39.023(a) or an English language arts assessment instrument under Education Code 39.023(c), as applicable, with the assessment instrument administered in English, or, if the student is enrolled in the first or second grade, an achievement score at or above the 40th percentile in the reading and language arts sections of an English standardized test approved by TEA; and

3. TEA-approved criterion-referenced tests and the results of a subjective teacher evaluation.

Education Code 29.056(g)

Post-Exit Monitoring and Reenrollment

The LPAC may reenroll the student in the program if later evidence suggests that a student who has been transferred out of a bilingual education or special language program has inadequate English proficiency and achievement. Classification of students for reenrollment must be based on the criteria required by Education Code 29.056. *Education Code 29.056(h)*

The LPAC shall reevaluate a student who is transferred out of a bilingual education or special language program if the student earns a failing grade in a subject in the foundation curriculum during any grading period in the first two school years after the student

is transferred to determine whether the student should be reenrolled in a bilingual education or special language program.

During the first two school years after a student is transferred out of a bilingual education or special language program, the LPAC shall review the student's performance and consider:

1. The total amount of time the student was enrolled in bilingual education or special language programs;
2. The student's grades each grading period in each subject in the foundation curriculum;
3. The student's performance on state assessment instruments;
4. The number of credits the student has earned toward high school graduation, if applicable; and
5. Any disciplinary actions taken against the student under Education Code Chapter 37, Subchapter A.

After the evaluation, the LPAC may require intensive instruction for the student or reenroll the student in a bilingual education or special language program.

Education Code 29.0561

Program Evaluation

A district that is required to implement a bilingual education or ESL program shall conduct an annual evaluation in accordance with 19 Administrative Code 89.1265. The annual evaluation report shall be presented to the board before November 1 of each year. The report shall be retained at the district level and must meet the requirements of 19 Administrative Code 89.1265(b)-(c).

A district shall report to parents their child's English proficiency development as a result of participation in the program offered to EB students.

In alignment with the district improvement plan, each school year, the principal of each campus, with assistance from the campus level committee, shall develop, review, and revise the campus improvement plan for the purposes of improving student performance for EB students. [See BQB]

19 TAC 89.1265

Notice to Parents

In accordance with Education Code 28.010 [see EHDD], a district shall notify the parent of each student enrolled in grade 9 or above of the availability of career and technology education programs or other work-based education programs. *Education Code 28.010(a)(1)(B)*

Career and Technology Program

Each public school student shall master the basic skills and knowledge necessary for managing the dual roles of family member and wage earner and for gaining entry-level employment in a high-skill, high-wage job or continuing the student's education at the post-secondary level. *Education Code 29.181.*

The board may conduct and supervise career and technology classes and other educational programs for students and for other persons of all ages and spend local maintenance funds for the cost of those classes and programs. In developing a career and technology program, the board shall consider the state plan for career and technology education. *Education Code 29.183* [See EEL]

Distinguished Achievement in Career and Technology Education

The board may develop and offer a program that provides a rigorous course of study consistent with the required curriculum [see EHAA] and under which a student may:

1. Receive specific education in a career and technology profession that leads to postsecondary education or meets or exceeds business or industry standards;

2. Obtain from a district an award for distinguished achievement in career and technology education and a stamp or other notation on the student's transcript that indicates receipt of the award.

An award granted under this section is not in lieu of a diploma or certificate of coursework completion. [See EI]

In developing the program, the board shall consider the state plan for career and technology education. The board must submit the proposed program to the commissioner of education in accordance with criteria established by the commissioner.

Contracts with Other Entities

The board may contract with an entity listed in Education Code 29.184(a) [see EEL] for assistance in developing the program or providing instruction to district students participating in the program. The board may also contract with a local business or a local institution of higher education for assistance in developing or operating a career and technology education program. A program may provide education in areas of technology unique to the local area.

Education Code 29.187

Insurance The board may provide insurance to protect a business that contracts with a district under this provision. [See CRB] *Education Code 29.191*

Applicability The following provisions apply only to districts receiving federal career and technical education funds. *19 TAC 75.1021*

Federal CTE Funding

An eligible secondary entity seeking financial assistance under the Carl D. Perkins Act of 2006 shall submit a local plan to the Texas Education Agency (TEA) as described in 20 U.S.C. 2354, in accordance with requirements establish by TEA. Each eligible recipient that receives funding under the Carl D. Perkins Act of 2006 shall use the funds to improve career and technical education programs in compliance with 20 U.S.C. 2355. *19 TAC 75.1022*

For information regarding federal career and technical funds under the "Strengthening Career and Technical Education for the 21st Century Act" (the reauthorization of the Carl D. Perkins Act of 2006), see 20 U.S.C. 2301 et seq.

Program Evaluation A district shall annually evaluate its career and technical education programs. *19 TAC 75.1025*

Special Populations Members of special populations shall be provided career and technical services in accordance with all applicable federal and state laws, regulations, and rules. *19 TAC 75.1023(a)*

Definition For purposes of this section, a "member of a special population" includes:

1. An individual with a disability [see EHBAB];
2. An individual from an economically disadvantaged family, including low-income youth and adults;
3. An individual preparing for nontraditional fields;
4. A single parent, including a single pregnant woman;
5. An out-of-workforce individual;
6. An English learner;
7. A homeless individual described in Section 725 of the McKinney-Vento Homeless Assistance Act;
8. Youth who are in, or have aged out of, the foster care system; and
9. Youth with a parent who is a member of the armed forces and is on active duty.

20 U.S.C. 2302(29)

Students with Disabilities

A student with a disability shall be provided career and technical education in accordance with all applicable federal law and regulations including the Individuals with Disabilities Education Act (IDEA) of 2004 and its implementing regulations, state statutes, and rules of the SBOE and the commissioner.

A student with a disability shall be instructed in accordance with the student's individualized education program (IEP), in the least restrictive environment, as determined by the admission, review, and dismissal (ARD) committee. If a student with a disability is unable to receive a free appropriate public education (educational benefit) in a regular career and technical education program, using supplementary aids and services, the student may be served in separate programs designed to address the student's occupational/training needs, such as career and technical education for students with disabilities (CTED). [See EHBA]

A student with a disability identified in accordance with IDEA of 2004 is an eligible participant in career and technical education when the following requirements are met:

1. The ARD committee shall include a representative from career and technical education, preferably the teacher, when considering initial or continued placement of a student in career and technical education program;
2. Planning for the student shall be coordinated among career and technical education, special education, and state rehabilitation agencies and should include a coherent sequence of courses;
3. A district shall monitor to determine if the instruction being provided a student with a disability in career and technical education classes is consistent with the student's IEP;
4. A district shall provide supplementary services that each student with a disability needs to successfully complete a career and technical education program, such as curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices;
5. A district shall help fulfill the transitional service requirements of the IDEA of 2004 and implementing regulations, state statutes, and rules of the commissioner for each student with a disability who is completing a coherent sequence of career and technical education courses; and
6. When determining placement in a career and technical education classroom, the ARD committee shall consider a student's graduation plan, the content of the individual transition

plan, the IEP, and classroom supports. Enrollment numbers should not create a harmful effect on student learning for a student with or without disabilities in accordance with the provisions in the IDEA of 2004 and its implementing regulations.

19 TAC 75.1023

Student Organizations

A district may use federal career and technical education funds to provide opportunities for student participation in approved student leadership organizations and assist career and technical student organizations in accordance with all applicable federal and state laws, rules, and regulations. A student shall not, however, be required to join a career and technical student organization. Student participation in career and technical student organizations shall be governed in accordance with 19 Administrative Code Chapter 76 (extracurricular activities).

The following career and technical student organizations are recognized by the U.S. Department of Education and TEA:

1. Business Professionals of America (BPA);
2. DECA;
3. Future Business Leaders of America (FBLA);
4. FFA;
5. Family, Career, and Community Leaders of America (FCCLA);
6. Health Occupations Students of America (HOSA);
7. Technology Student Association (TSA); and
8. SkillsUSA.

19 TAC 75.1024 [See FM]

Certification Subsidy

A student is entitled to a subsidy for a certification exam if:

1. The student:
    a. Successfully completes the career and technology program of a school district in which the student receives training and instruction for employment; or
    b. Is enrolled in a special education program under Education Code Chapter 29, Subchapter A; and
2. The student passes a certification examination to qualify for a license or certificate that is an industry certification for pur-

poses of state accountability [see AIA], administered while the student is enrolled in a school district.

A student may not receive more than two subsidies under Education Code 29.190.

To obtain reimbursement for a subsidy paid under this provision, a district must pay the fee for the examination and submit to the commissioner a written application on a form prescribed by the commissioner stating the amount of the fee paid for the certification examination.

Education Code 29.190

A district is entitled to reimbursement for the amount of a subsidy paid by the district for not more than two certification examinations per student under these provisions, including costs paid for associated fingerprinting and criminal history record information review. *Education Code 48.156*

Applied Sciences Pathway Program

The commissioner shall establish and administer the Applied Sciences Pathway program to provide opportunities for students to concurrently earn high school diplomas and certificates from institutions of higher education. *Education Code 29.914(b)*

The commissioner shall approve for participation in the program partnerships between districts and institutions of higher education to provide courses in a non-duplicative sequence of progressive achievement that lead to a high school diploma and completion of a certificate program with a successful job placement rate in high-wage, high-growth jobs in certain industries listed in Education Code 29.914(c)(2)(A-T). Beginning with the 2027-28 school year, the commissioner may review the industries approved once every five years to reflect current labor market trends. *Education Code 29.914(c)-(c-1)*

A partnering school district must permit all students in grade 11 or 12 to enroll in a course of study provided through the partnership. *Education Code 29.914(d)(3)*

Time that a student spends participating in the program is counted as part of the minimum number of instructional hours required for a student to be considered a full-time student in average daily attendance. *Education Code 29.914(g)*

[For additional information about the Applied Sciences Pathway program, see Education Code 29.914]

Note: Only districts that identify 15 or more eligible students are required to provide prekindergarten programs.

Tuition-Free Prekindergarten Program

A district shall offer prekindergarten classes if it identifies 15 or more eligible students who are at least four years of age. A district may offer prekindergarten if it identifies 15 or more eligible children who are at least three years of age.

A district may not charge tuition for a prekindergarten program offered under these provisions.

Definitions

In this section:

1. "Child" includes a stepchild.
2. "Parent" includes a stepparent.

Eligibility

A child is eligible for enrollment in free prekindergarten if the child is at least three years of age and is:

1. Unable to speak and comprehend the English language;
2. Educationally disadvantaged;
3. Homeless [see FD] regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control;
4. The child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;
5. The child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty;
6. Or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing under Family Code 262.201 or foster care in another state or territory, if the child resides in Texas;
7. The child of a person eligible for the Star of Texas Award as:
    a. A peace officer under Government Code 3106.002;
    b. A firefighter under Government Code 3106.003; or
    c. An emergency medical first responder under Government Code 3106.004;or

8. The child of a person employed as a classroom teacher at a school in the district that offers a prekindergarten class.

A child who is eligible for enrollment for free prekindergarten at the age of three and enrolls in prekindergarten class at the age of three remains eligible for enrollment in a prekindergarten class for the following school year.

A child who is eligible for enrollment under item 4 or 5 above remains eligible if the child's parent leaves the armed forces, or is no longer on active duty, after the child begins the prekindergarten class.

Education Code 29.153(a)-(b), (e-1), (f)

Parent Election

Subject to a district's decision to convene a retention committee [see EIE], a parent or guardian may elect for a student to enroll in prekindergarten, if the student would have been eligible to enroll in prekindergarten during the previous school year under the eligibility described above and the student has not yet enrolled in kindergarten, or to repeat prekindergarten. *Education Code 28.02124(a)(1)-(2)*

Notice

A district shall develop a system to notify the population in the district with children who are eligible for enrollment in a free prekindergarten program of the availability of the program. The system must include public notices issued in English and Spanish. *Education Code 29.153(e)*

Half-Day or Full-Day

A prekindergarten class may be operated on a half-day basis for children under four years of age and shall be operated on a full-day basis for children who are at least four years of age.

Transportation

A district is not required to provide transportation for a prekindergarten class. If transportation is provided, it is included for funding purposes as part of the regular transportation system.

Education Code 29.153(c)

High-Quality Prekindergarten Required

A prekindergarten class for children who are least four years of age must comply with the program standards required for high-quality prekindergarten programs under Education Code Chapter 29, Subchapter E-1. [See High-Quality Prekindergarten Program, below]

Exemption

The commissioner of education shall exempt a district from the application of all or any part of Education Code Chapter 29, Subchapter E-1 for a prekindergarten class for children who are at least four years of age, if the commissioner determines that:

1. The district would be required to construct classroom facilities in order to provide prekindergarten classes; or

2. Implementing any part of this section would result in fewer eligible children being enrolled in a prekindergarten class under this section.

A district may not receive an exemption unless the district has solicited proposals for partnerships with public or private entities regarding prekindergarten classes required under this section in accordance with guidance provided by the Texas Education Agency (TEA) and considered submitted proposals at a public meeting. A decision of the board regarding a partnership described by this provision is final.

An exemption may not be granted for a period longer than three school years and may be renewed only once.

Education Code 29.153(c-1)-(d-2)

Constructing, Repurposing, or Leasing a Facility

Before a district may construct, repurpose, or lease a classroom facility, or issue bonds for the construction or repurposing of a classroom facility, to provide the prekindergarten classes required under Education Code 29.153, the district must:

1. Solicit and consider proposals for partnerships to provide those classes with community-based child-care providers who:
    a. Are a Texas Rising Star Program provider with a three-star certification or higher;
    b. Are nationally accredited;
    c. Are a Head Start program provider;
    d. Are a Texas School Ready! participant; or
    e. Meet the requirements under Education Code 29.1532; and
2. Have received an official determination from a prekindergarten partnership intermediary that the providers from which the district or school has considered proposals are unable to serve the students for whom the district plans to provide prekindergarten classes in the classroom facility to be constructed, repurposed, or leased.

Education Code 29.153(g)

Compliance With Ordinances

A facility or location at which prekindergarten classes are provided by a district in partnership with a private entity must comply with any municipal ordinance applicable to the operation of a private prekindergarten program and may not be required to comply with

any municipal ordinance applicable to operation of a prekindergarten program by a school district. *Education Code 29.153(h)*

Prekindergarten Partnership Intermediaries

The commissioner shall designate at least four appropriate entities as prekindergarten partnership intermediaries to develop partnerships between districts and private prekindergarten providers. *Education Code 29.153(g-1)*

A partnership entered into between a district and a private provider for a prekindergarten class must provide for the provider to receive funding for each district student enrolled in the class in an amount that is not less than 85 percent of the amount of funding the district receives for the student. The commissioner may waive this requirement on request by a school district. *Education Code 29.153(i)*

Tuition-Supported or District-Financed

A district may offer on a tuition basis or use district funds to provide:

1. An additional half-day of prekindergarten classes to children eligible for free prekindergarten who are under four years of age; and
2. Half-day and full-day prekindergarten classes to children not eligible for free prekindergarten.

A district may not adopt a tuition rate that is higher than necessary to cover the added costs of the program, including any costs associated with collecting, reporting, and analyzing data under Education Code 29.1532(c) (PEIMS data for prekindergarten programs).

A district may offer a prekindergarten program on a tuition basis only if the district has received an official determination from a prekindergarten partnership intermediary that no private prekindergarten providers meet the qualifications and are available to serve the students for whom the district plans to charge tuition.

Education Code 29.1531(a)-(c)

Program Design

A district's prekindergarten program shall be designed to develop skills necessary for success in the regular public school curriculum, including language, mathematics, and social skills. *Education Code 29.1532(a)*

Shared Site

Before establishing a new prekindergarten program, a district shall consider the possibility of sharing use of an existing Head Start or other child-care program site as a prekindergarten site. *Education Code 29.1533*

Prekindergarten Licensing Standards

If a district contracts with a private entity to operate a prekindergarten program, the program shall comply at a minimum with the applicable child-care licensing standards adopted by the Texas De-

partment of Family and Protective Services under Human Resources Code 42.042 and the class size requirements for prekindergarten classes imposed under Education Code 25.112(a) [see EEB]. *Education Code 29.1532(b)*

Daily Physical Activity

A district shall require students in full-day prekindergarten to participate in moderate or vigorous daily physical activity for at least 30 minutes throughout the school year, as part of the district's physical education program or through structured activity during a campus's daily recess.

To the extent practicable, a district shall require a student enrolled in prekindergarten on less than a full-day basis to participate in the same type and amount of physical activity as a student enrolled in full-day prekindergarten.

If a district determines, for any particular grade level, that requiring moderate or vigorous daily physical activity is impractical due to scheduling concerns or other factors, the district may as an alternative require a student in that grade level to participate in moderate or vigorous physical activity for at least 135 minutes during each school week.

A district must provide an exemption for a student who is unable to participate in the required physical activity because of illness or disability.

Education Code 28.002(l)

High-Quality Prekindergarten Program

A district providing a prekindergarten program must provide high-quality educational services established under Education Code Chapter 29, Subchapter E-1, to qualifying students.

Eligibility

A student is qualified to participate in a high-quality prekindergarten program if the student is four years of age on September 1 of the year the student begins the program and meets the eligibility requirements for tuition-free prekindergarten [see above].

19 TAC 102.1003(a)

A district shall select and implement a curriculum for a prekindergarten program that:

1. Includes the prekindergarten guidelines established by TEA;
2. Measures the progress of students in meeting the recommended learning outcomes; and
3. Does not use national curriculum standards developed by the Common Core State Standards Initiative.

Education Code 29.164, .167(a)

A school district shall implement a curriculum for a high-quality prekindergarten program that addresses the Texas Prekindergarten Guidelines in the domains listed in 19 Administrative Code 102.1003(b).

The district shall measure student progress and kindergarten preparation in accordance with 19 Administrative Code 102.1003(c). *19 TAC 102.1003*

Teacher Requirements

Each teacher for a prekindergarten program class must be certified under Education Code Chapter 21, Subchapter B and have one of the following additional qualifications:

1. A Child Development Associate (CDA) credential or another early childhood education credential approved by TEA;
2. Certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;
3. At least eight years' experience of teaching in a nationally accredited child-care program or a Texas Rising Star Program;
4. An associate or baccalaureate degree in early childhood education or early childhood special education or a non-early childhood education degree with a documented minimum of 15 units of coursework in early childhood education;
5. Documented completion of the Texas School Ready Training Program (TSR Comprehensive); or
6. Be employed as a prekindergarten teacher in a district that has met the requirements of 19 Administrative Code 102.1003(d)(6).

A district may allow a teacher employed by the district to receive the training required to be awarded a CDA credential from a regional education service center. Training may not include national curriculum standards developed by the Common Core State Standards Initiative.

A district or an entity with which the district contracts to provide a prekindergarten program must attempt to maintain an average ratio in any prekindergarten program class of not less than one qualified teacher or teacher's aide for each 11 students.

19 TAC 102.1003(d), (h); Education Code 29.167(b)-(d)

Prekindergarten Class Provided by Partnership Entity

Each teacher in a prekindergarten class provided by an entity with which a district contracts to provide a prekindergarten program must be certified under Education Code Chapter 21, Subchapter B, to teach prekindergarten or supervised by a person who meets the teacher requirements above.

Each teacher must also have one of the following additional qualifications:

1. At least two years' experience of teaching in a nationally accredited child-care program or a Texas Rising Star Program and:
    a. A CDA credential or another early childhood education credential approved by TEA; or
    b. A certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;
2. An associate or baccalaureate degree in early childhood education or early childhood special education or a non-early childhood education degree with a documented minimum of 15 units of coursework in early childhood education;
3. At least eight years' experience teaching in a nationally accredited child care program or a Texas Rising Star Program; or
4. Be employed as a prekindergarten teacher in a partnership program that meets the requirements of 19 Administrative Code 102.1003(e)(4).

When appropriate, a teacher must also be appropriately certified or be supervised by a person who is appropriately certified to provide effective instruction to emergent bilingual students enrolled in the prekindergarten program.

Education Code 29.167(b-1)-(b-2)

A prekindergarten partnership supervisor:

1. Shall meet the requirements under 19 Administrative Code 102.1003(d);
2. May supervise multiple prekindergarten classrooms; and
3. Shall ensure programmatic compliance and support classroom instruction, the developmental needs of students, and

continuous quality improvement, including professional development.

19 TAC 102.1003(e)-(g)

Family Engagement Plan

A district shall develop, implement, and make available on the district or campus website by November 1 of each school year, a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven.

The family engagement plan shall include a primary point of contact and contact information.

The family engagement plan shall meet the requirements of 19 Administrative Code 102.1003(e)(2).

19 TAC 102.1003(h); Education Code 29.168(a)

Report and Evaluation

In a format prescribed by TEA, a district shall report information in compliance with 19 Administrative Code 102.1003(i).

A district shall:

1. Select and implement appropriate methods for evaluating the district's high-quality prekindergarten program by using data from a student progress monitoring instrument from the commissioner's list of approved prekindergarten instruments;
2. Make data from the results of program evaluations available to parents; and
3. Plan for data-driven program improvements annually by using information from the district's program evaluation to ensure the district's prekindergarten program is meeting all high-quality prekindergarten indicators.

A district may administer diagnostic assessments to students in a program class to evaluate student progress but may not administer a state standardized assessment instrument.

An assessment instrument administered to a prekindergarten program class must be selected from a list of appropriate prekindergarten assessment instruments identified by the commissioner.

19 TAC 102.1003(j), (l); Education Code 29.169

Eligible Private Providers

A district that offers a high-quality prekindergarten program may enter into a contract with an eligible private provider to provide services or equipment for the program.

To be eligible to contract with a district to provide a program or part of a program, a private provider must be licensed by and in good standing with the Department of Family and Protective Services. A private provider is in good standing with the Department of Family and Protective Services if the department has not taken an action against the provider's license during the 24-month period preceding the date of a contract with a district. The private provider must also:

1. Be accredited by a research-based, nationally recognized, and universally accessible accreditation system approved by the commissioner;
2. Be a Texas Rising Star Program provider with a three-star certification or higher;
3. Be a Texas School Ready! participant;
4. Have an existing partnership with a district to provide a prekindergarten program not provided under Subchapter E-1; or
5. Be accredited by an organization that is recognized by the Texas Private School Accreditation Commission.

A prekindergarten program provided by a private provider under Education Code 29.171 is subject to the requirements of Education Code Chapter 29, Subchapter E-1 and the class size requirement for prekindergarten classes imposed by Education Code 25.112(a) [see EEB].

Education Code 29.171

Prekindergarten Expansion Grant

A district may use funds from grants administered by the commissioner to expand an existing half-day prekindergarten program to a full-day basis or to implement a prekindergarten program on a campus that does not have a prekindergarten program.

A district may use funds received under this program to employ teachers and other personnel for a prekindergarten program or to acquire curriculum materials or equipment, including computers, for use in prekindergarten programs.

A district may use funds granted under this program in contracting with another entity, including a private entity.

Education Code 29.155(a), (b), (i)

Ready to Read Grant

A district that operates a prekindergarten program is eligible to apply for a Ready to Read grant if at least 75 percent of the children enrolled in the program are low-income students, as determined by commissioner rule.

Grants shall be used to provide scientific, research-based pre-reading instruction for the purpose of directly improving pre-reading skills and for identifying cost-effective models for pre-reading intervention. Grants funds shall be used for:

1. Professional staff development in pre-reading instruction;
2. Pre-reading curriculum and materials;
3. Pre-reading skills assessment materials; and
4. Employment of pre-reading instructors.

Education Code 29.157(b), (c)

Statewide Information Referral Network

A district shall provide the Texas Information and Referral Network with information regarding eligibility for and availability of child-care and education services for inclusion in the statewide information referral network. A district shall provide the information in a form determined by the executive commissioner of the Texas Health and Human Services Commission. *Gov't Code 531.0312*

"Child-care and education services" includes child-care and education services provided by a district through a prekindergarten or after-school program. *Gov't Code 531.03131(a)*

Staff of the Texas Information and Referral Network shall send an electronic mail message to each appropriate entity containing the name of and contact information for each applicant and a description of the services for which the applicant is applying.

On receipt of such an electronic mail message, a district shall contact the applicant to verify information regarding the applicant's eligibility for available child-care and education services. On certifying eligibility, a district shall match the applicant with entities providing those services in the applicant's community, including local workforce development boards, local child-care providers, or a Head Start or Early Head Start program provider.

A district shall cooperate with the Texas Information and Referral Network as necessary in the administration of this project.

Gov't Code 531.0312(c)-(e)

Students who are deaf or hard of hearing must have an education in which their unique communication mode is respected, used, and developed to an appropriate level of proficiency. *Education Code 29.303*

Personnel

A student who is deaf or hard of hearing must have an education in which teachers, psychologists, speech language pathologists, progress assessors, administrators, and others involved in education understand the unique nature of deafness and the hard-of-hearing condition. A teacher of deaf or hard-of-hearing students either must be proficient in appropriate language modes or use an interpreter certified in appropriate language modes if certification is available. General and special education personnel who work with students who are deaf or hard of hearing must be adequately prepared to provide educational instruction and services to those students.

The district shall employ or provide access to appropriate qualified staff with proficient communications skills, consistent with credentialing requirements, to fulfill the responsibilities of the district and shall make positive efforts to employ qualified individuals with disabilities.

Education Code 29.304

Involvement of Others

Students who are deaf or hard of hearing must have an education in which parents or legal guardians and advocates for parents or legal guardians are involved in determining the extent, content, and purpose of programs. Other individuals may be involved at the discretion of parents or legal guardians or the district. *Education Code 29.306*

Students who are deaf or hard of hearing shall be given the opportunity to be exposed to deaf or hard-of-hearing role models. *Education Code 29.307*

Assessment

The district shall not discriminate on the basis of race, culture, or sex when selecting and administering procedures and materials for assessment and placement of students who are deaf or hard of hearing. *Education Code 29.310(a)*

Placement

A single assessment instrument may not be the sole criterion for determining the placement of a student who is deaf or hard of hearing. *Education Code 29.310(b)*

Procedures and materials for the assessment and placement of a student who is deaf or hard of hearing shall be in the student's preferred mode of communication. All other procedures and materials used with any student who is deaf or hard of hearing and who is an

emergent bilingual student shall be in the student's preferred mode of communication. *Education Code 29.310(c)*

Each student who is deaf or hard of hearing must be thoroughly assessed to ascertain the student's potential for communicating through a variety of means. *Education Code 29.310(d)*

Counseling

Appropriate psychological counseling services for a student who is deaf or hard of hearing shall be made available at the student's school site in the student's primary mode of communication. Appropriate auditory systems shall be used with students who are hard of hearing, if required by the admission, review, and dismissal (ARD) committee. *Education Code 29.312*

Evaluation

The district must provide continuous evaluation of the effectiveness of the district's services for students who are deaf or hard of hearing. The evaluations shall follow program excellence indicators established by the Texas Education Agency (TEA). Each district shall submit their evaluations to TEA on a schedule set by TEA. *Education Code 29.313*

Transition to General Education

In addition to satisfying requirements under state and federal law for vocational training, the district shall develop and implement a transition plan for transition of students who are deaf or hard of hearing into a general education class if the students are to be transferred from a special class or center or from a nonpublic, nonsectarian school into a general education class for any part of the school day. The transition plan must provide for activities to integrate the students into the general education program and to support the transition of the students from the special education program into the regular education program. *Education Code 29.314*

Regional Day School Programs for the Deaf

In accordance with Education Code 30.081 through 30.087, a district shall have access to regional day school programs for the deaf operated by districts at sites previously established by the State Board of Education. Any student who is deaf or hard of hearing with a disability that severely impairs processing linguistic information through hearing, even with recommended amplification, and that adversely affects educational performance shall be eligible for consideration for the Regional Day School Program for the Deaf, subject to the ARD committee recommendations. *19 TAC 89.1080*

Mandatory Recognition Dates

A district shall regularly observe the following recognition days, weeks, and months by appropriate programs, celebrations, and activities:

Women's Independence Day

August 26: Women's Independence Day, to commemorate the ratification in 1920 of the Nineteenth Amendment to the United States Constitution, which guaranteed women the right to vote. Women's Independence Day shall be regularly observed by appropriate programs in the public schools to inspire a greater appreciation of the importance of women's suffrage. *Gov't Code 662.051*

Hydrocephalus Awareness Month

September: Hydrocephalus Awareness Month, to:

1. Increase public awareness of hydrocephalus, a serious neurological condition characterized by the abnormal buildup of cerebrospinal fluids in the ventricles of the brain; and

2. Encourage the development of partnerships between the federal government, health-care professionals, and patient advocacy groups to advance the public's understanding of the condition, improve the diagnosis and treatment of the condition, and support research for a cure.

Hydrocephalus Awareness Month shall be regularly observed by appropriate activities in public schools to increase awareness of hydrocephalus.

Gov't Code 662.106

Texas First Responders Day

September 11: Texas First Responders Day, in honor of the bravery, courage, and determination of Texas men and women who assist others in emergencies. Texas First Responders Day shall be regularly observed by appropriate ceremonies in the public schools to honor Texas first responders. A district may determine the appropriate ceremonies by which Texas observes Texas First Responders Day. *Gov't Code 662.050*

September 11

September 11: To commemorate the events of September 11, 2001, in each year that date falls on a regular school day, each public elementary and secondary school shall provide for the observance of one minute of silence at the beginning of the first class period of that day. Immediately before the required period of observance, the class instructor shall make a statement of reference to the memory of individuals who died on September 11, 2001. The required period of observance may be held in conjunction with the minute of silence required by Education Code 25.082. [See EC] *Education Code 25.0821*

Constitution Day

September 17: A district that receives federal funds for a fiscal year shall hold an educational program on the United States

Constitution for the students served by the district. *Pub. L. 108-447 (2004)*

Celebrate Freedom Week

Week of September 17: Celebrate Freedom Week, to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded. *Education Code 29.907*

Appropriate Instruction

Each social studies class shall include, during Celebrate Freedom Week or during another full school week as determined by the board, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the United States Constitution, including the Bill of Rights, in their historical context.

The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the United States Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

19 TAC 74.33(a)

Recitation

Each district shall require that, during Celebrate Freedom Week or other prescribed week of instruction, students in grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — That to secure these Rights, Governments are instituted among Men, deriving their Just Powers from the Consent of the Governed."

Exception

Each district shall excuse from recitation a student:

1. Whose parent or guardian submits to the district a written request that the student be excused;
2. Who, as determined by the district, has a conscientious objection to the recitation; or
3. Who is the child of a representative of a foreign government to whom the United States government extends diplomatic immunity.

19 TAC 74.33(b), .36

American Indian Heritage Day

The last Friday in September is in recognition of the historic, cultural, and social contributions American Indian communities and leaders have made to Texas. American Indian Heritage Day shall

	be regularly observed by appropriate ceremonies, activities, and programs in public schools to honor American Indians in Texas and to celebrate the rich traditional and contemporary American Indian culture. *Gov't Code 662.056*
Father of Texas Day	November 3: Father of Texas Day, in memory of Stephen F. Austin, the great pioneer patriot and the real and true Father of Texas. Father of Texas Day shall be regularly observed by appropriate and patriotic programs in the public schools to properly commemorate the birthday of Stephen F. Austin and to inspire a greater love for this beloved state. *Gov't Code 662.045*
Sam Rayburn Day	January 6: Sam Rayburn Day, in memory of that great Texas and American statesman, Sam Rayburn. Sam Rayburn Day shall be regularly observed by appropriate programs in the public schools to commemorate the birthday of Sam Rayburn. *Gov't Code 662.041*
State of Texas Anniversary Remembrance Day	February 19: State of Texas Anniversary Remembrance Day (STAR Day), in honor of Texas joining the Union and the day that James Pinckney Henderson became the first governor of the state of Texas in 1846. STAR Day shall be regularly observed by appropriate and patriotic programs in the public schools to properly commemorate the annexation of this state and to inspire a greater appreciation for the history of this state. *Gov't Code 662.047*
Texas History Month	March: Texas History Month, in honor of those Texans who helped shape the history of the state of Texas and in recognition of events throughout Texas's history. Texas History Month shall be regularly observed by appropriate celebrations and activities in public schools to promote interest in and knowledge of Texas history. *Gov't Code 662.102*
Texas Girls in STEM Day	March 1 is designated as Texas Girls in STEM Day to celebrate and encourage the participation of girls in this state in fields related to science, technology, engineering, and mathematics. Texas Girls in STEM Day shall be regularly observed by appropriate ceremonies, activities, and programs in public schools, public institutions of higher education, and other places to: 1. Encourage girls in this state to consider career fields in science, technology, engineering, and mathematics; and 2. Celebrate and honor the women of this state who have excelled in those fields. *Gov't Code 662.073*

	In recognition of Texas Girls in STEM Day, each district may include throughout the month of March appropriate instruction, activities, and programs to encourage and celebrate women in career fields related to science, technology, engineering, and mathematics. The instruction may include programs that profile women in those fields and related fields, including finance, information technology, data analytics, cybersecurity, and health-care cloud architecture. *Education Code 29.925*
Texas Fruit and Vegetable Day	The first Friday in April is designated Texas Fruit and Vegetable Day in public schools to promote awareness of the health benefits of fruits and vegetables and to encourage students to consume more fruits and vegetables during Texas Fruit and Vegetable Month. Texas Fruit and Vegetable Day shall include appropriate instruction, as determined by the district. *Education Code 29.9073*
Gifted and Talented Week	The first full week in April is Gifted and Talented Week. Tex. H.R. Con. Res. 64, 89th Leg., R.S. (2025)
Public School Paraprofessional Day	The second Wednesday in May: Public School Paraprofessional Day, in recognition of education paraprofessionals including teacher assistants, instructional aides, educational trainers, library attendants, bilingual assistants, special education associates, mentors, and tutors. Public School Paraprofessional Day shall be regularly observed by appropriate ceremonies and activities in the public schools to properly recognize the paraprofessionals who have made tremendous contributions to the educational process. *Gov't Code 662.049*
Texas Military Heroes Day	To educate students about the sacrifices made by brave Texans who have served in the armed forces of the United States, the governor shall designate a day to be known as Texas Military Heroes Day in public schools. Texas Military Heroes Day shall include appropriate instruction, as determined by each district. Instruction may include: 1. Information about persons who have served in the armed forces of the United States and are from the community or the geographic area in which the district is located; and 2. Participation, in person or using technology, in age-appropriate learning projects at battlefields and gravesites associated with a person who has served in the armed forces. *Education Code 29.9071*
Generation Texas Week	Each district offering middle school, junior high school, or high school grade levels shall designate one week during the school year as Generation Texas Week. During the designated week,

each middle school, junior high school, and high school shall provide students with comprehensive grade-appropriate information about the pursuit of higher education, including:

1. Higher education options;
2. Standard admission requirements for institutions of higher education, including:
    a. Overall high school grade point average;
    b. Required curriculum;
    c. College readiness standards and expectations as determined under Education Code 28.008; and
    d. Scores necessary on generally recognized tests or assessment instruments used in admissions determinations, including the Scholastic Assessment Test and the American College Test;
3. Automatic admission of certain students to general academic teaching institutions under Education Code 51.803 [see EIC]; and
4. Financial aid availability and requirements, including the financial aid information provided by school counselors under Education Code 33.007(b) [see FFEA].

In addition, each middle school, junior high school, and high school shall provide to students at least one public speaker to promote the importance of higher education.

Education Code 29.911

Holocaust Remembrance Week

To educate students about the Holocaust and inspire in students a sense of responsibility to recognize and uphold human value and to prevent future atrocities, the governor shall designate a week to be known as Holocaust Remembrance Week in public schools.

Holocaust Remembrance Week shall include age-appropriate instruction, as determined by each district. Instruction shall include:

1. Information about the history of and lessons learned from the Holocaust;
2. Participation, in person or using technology, in learning projects about the Holocaust; and

3. The use of materials developed or approved by the Texas Holocaust, Genocide, and Antisemitism Advisory Commission.

Education Code 29.9072

Optional Recognition Dates

In addition, a district may observe the following recognition days, weeks, or months, by appropriate celebrations and activities:

Dr. Hector P. Garcia Day

Third Wednesday of September: Dr. Hector P. Garcia Day, in memory of the significant contributions to the Mexican American civil rights movement of Dr. Hector P. Garcia, a distinguished physician and a recipient of the Presidential Medal of Freedom and the founder of the American GI Forum, which promotes civil rights protection of Hispanic veterans and all Americans. Dr. Garcia, a World War II hero, was awarded a Bronze Star Medal with six battle stars in recognition of his meritorious service to the United States. Dr. Hector P. Garcia Day may be regularly observed by appropriate ceremonies and activities in the public schools to properly commemorate the importance of the contributions made by Dr. Garcia. *Gov't Code 662.055*

Persons with Disabilities History and Awareness Month

October: Persons with Disabilities History and Awareness Month, to increase public awareness of the many achievements of people with disabilities; encourage public understanding of the disability rights movement; and reaffirm the local, state, and federal commitment to providing equality and inclusion for people with disabilities. A district may elect to observe Persons with Disabilities History and Awareness Month and determine the appropriate activities by which the school observes Persons with Disabilities History and Awareness Month. *Gov't Code 662.109*

Texas Native Plant Week

Third week in October: Texas Native Plant Week, to celebrate the native plants of Texas. Texas Native Plant Week may be regularly observed in public schools with programs to appreciate, explore, and study Texas native plants. *Gov't Code 662.154*

Lung Cancer Awareness Month

November: Lung Cancer Awareness Month, to increase awareness of lung cancer and encourage funding of research and more effective treatments. Lung Cancer Awareness Month may be regularly observed by appropriate activities in public schools to increase the awareness of lung cancer and support for lung cancer research. *Gov't Code 662.104*

Human Trafficking Prevention Month

January: Human Trafficking Prevention Month, to increase awareness of human trafficking in an effort to encourage people to alert authorities to any suspected incidents involving human trafficking. Human Trafficking Prevention Month may be regularly observed through appropriate activities in public schools and other places to

	increase awareness and prevention of human trafficking. *Gov't Code 662.107*
Law Enforcement Appreciation Day	January 9: Law Enforcement Appreciation Day may be regularly observed in public schools and other places through appropriate activities. *Gov't Code 662.067*
Iwo Jima Day	February 19: Iwo Jima Day, in memory of the heroism and courage of the men and women of the armed forces of the United States who participated in the successful capture of the island of Iwo Jima beginning February 19, 1945. Iwo Jima Day may be regularly observed through appropriate activities in public schools and other places. *Gov't Code 662.062*
Child Safety Month	April: Child Safety Month, in recognition of the children of this state as this state's most precious resource. Child Safety Month is meant to ensure that the children of this state grow up in a safe and supportive environment by promoting their protection and care through increased public awareness of ways to reduce accidental injury and death through the use of bicycle helmets, seat belts, safety and booster seats, and smoke alarms, and the dangers presented to children by unattended and unlocked vehicles and by being left in closed vehicles during hot or sunny weather. Child Safety Month may be regularly observed by appropriate celebrations and activities in public schools to promote the protection and care of children in this state. *Gov't Code 662.105*
Sexual Assault Awareness Month	April: Sexual Assault Awareness Month, to increase awareness and prevention of sexual assault. Sexual Assault Awareness Month may be regularly observed through appropriate activities in public schools and other places to increase awareness and prevention of sexual assault. *Gov't Code 662.111*
Fentanyl Poisoning Awareness Week	To educate students about the dangers posed by the drug fentanyl and the risks of fentanyl poisoning, including overdose, the governor shall designate a week to be known as Fentanyl Poisoning Awareness Week in public schools. Fentanyl Poisoning Awareness Week may include age-appropriate instruction, including instruction on the prevention of the abuse of and addiction to fentanyl, as determined by a district. *Education Code 29.9074*
Student Elections	An election for the participation of students in kindergarten through grade 12 may be held in conjunction with a general, special, or primary election. The student election may be ordered by:

1. The commissioners court, for a student election held in conjunction with an election ordered by the governor or a county authority;

2. The governing body of a political subdivision, for a student election held in conjunction with an election of the political subdivision; or

3. The county executive committee, for a student election held in conjunction with a primary election.

A student election may be held only on election day or the day before election day.

The authority ordering a student election shall specify in the order each grade that may participate in the election. A student in a specified grade may enter a precinct polling place for the purpose of casting an unofficial ballot in the student election on the same offices and measures that appear on the official ballot.

The election officers serving in the official election may not serve in the student election. The authority ordering a student election shall appoint a separate set of election officers to conduct the student election, supervise the participating students, and tabulate and report the results of that election. The authority ordering a student election shall make the results of that election available to the public but only after the polling places are closed on election day.

Expenses incurred in the conduct of a student election, including any personnel expenses, may be paid only from private grant funds or donations.

Election Code 276.007

Notice to Parents

Each school year, a district shall notify the parent of each student enrolled in grade 9 or above of the availability of:

1. Programs under which a student may earn college credit, including advanced placement programs, dual credit programs, joint high school and college credit programs, and international baccalaureate programs;
2. Career and technology education programs or other work-based education programs in the district, including any internship, externship, or apprenticeship programs or a P-TECH (Pathways in Technology Early College High School) program;
3. Subsidies based on financial need available for fees paid to take college advanced placement tests or international baccalaureate examinations under Education Code 28.054; and
4. Funding for enrollment in dual credit courses under the FAST (Financial Aid for Swift Transfer) program [see below].

Districts must also notify parents of the qualifications for enrolling in programs described by items 1, 2, and 4 above.

The notice must include the name and contact information of any public or private entity offering such a program in the district.

A district may provide the notice on the district's internet website.

Education Code 28.010

College Credit Program

A district shall implement a program under which students may earn the equivalent of at least 12 semester credit hours of college credit in high school. If requested by the district, a public institution of higher education in this state shall assist the district in developing and implementing the program. The college credit may be earned through:

1. International baccalaureate, advanced placement, or dual credit courses;
2. Articulated postsecondary courses provided for local credit or articulated postsecondary advanced technical credit courses provided for state credit; or
3. Any combination of the courses in items 1 and 2.

Annually, a district shall report to the Texas Education Agency (TEA):

1. The number of students, including career and technical students, who have participated in the program and earned college credit; and

2. The cumulative number of courses in which participating students have enrolled and college credit hours the students have earned.

The program may provide a student the opportunity to earn credit for a course or activity, including an apprenticeship or training hours:

1. That satisfies a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree, and is approved by the Texas Higher Education Coordinating Board (THECB); and

2. For which a student may earn credit concurrently toward both the student's high school diploma and postsecondary academic requirements.

A dual credit course must be:

1. In the core curriculum of the public institution of higher education providing college credit;

2. A career and technical education course; or

3. A foreign language course.

The requirements above do not apply to a dual credit course offered as part of the early college education program established under Education Code 29.908 or any other early college program that assists a student in earning a certificate or an associate degree while in high school.

A district is not required to pay a student’s tuition or other associated costs for taking a course under this section.

College-Level Courses

A board may adopt a policy that allows a student to be awarded credit toward high school graduation for completing a college-level course. The course must be provided only by an institution of higher education that is accredited by any of the following regional accrediting associations:

1. Southern Association of Colleges and Schools;

2. Middle States Association of Colleges and Schools;

3. New England Association of Colleges and Schools;

4. North Central Association of Colleges and Schools;

5. Western Association of Colleges and Schools; or

6. Northwest Association of Colleges and Schools.

To be eligible to enroll and be awarded credit toward state graduation requirements, a student shall have the approval of the high school principal or other school official designated by a district. The course(s) for which credit is awarded shall provide advanced academic instruction beyond or in greater depth than the essential knowledge and skills for the equivalent high school course.

19 TAC 74.25

Dual Credit Programs

Dual credit includes a course for which a high school student may earn credit only at an institution of higher education (previously referred to as a dual enrollment course) if the course meets the requirements of this provision.

Eligible Courses

“Dual credit course” or “dual enrollment course” means a course that meets the following requirements:

1. The course is offered pursuant to an agreement under 19 Administrative Code 4.84, see below.

2. A course for which the student may earn one or more of the following types of credit:

    a. Joint high school and junior college credit under Education Code 130.008, or

    b. Another course offered by an institution of higher education, for which a high school student may earn semester credit hours or equivalent of semester credit hours toward satisfaction of:

        (1) A career and technical education course as defined by 19 Administrative Code 4.83(3) that satisfies a requirement necessary to obtain an industry-recognized credential, certificate, or an associate degree;

        (2) A foreign language requirement at an institution of higher education;

        (3) A requirement in the core curriculum, as that term is defined by Education Code 61.821, at an institution of higher education; or

        (4) A requirement in a field of study curriculum developed by the Coordinating Board under Education Code 61.823.

A student may earn a single grade toward both the college course and the high school credit or may earn two separate grades where the high school grade only reflects a student's mastery of secondary content.

Each dual credit course must meet the requirements of Chapter 4, Subchapter D.

19 TAC 4.83(10)

Partnership Agreements with Public Colleges

A district may enter into an agreement with a public college to form a dual credit partnership in accordance with 19 Administrative Code Chapter 4, Subchapter D. *Education Code 130.008; 19 TAC Ch. 4, Subch. D*

Community College Jurisdiction

A school district that operates a high school may enter into an agreement with a community college district, regardless of whether the high school is located within the service area of the community college district, to offer a course as provided by Education Code 130.008.

A course offered for joint high school and junior college credit must be:

1. In the core curriculum of the public junior college;
2. A career and technical education course; or
3. A foreign language course.

These requirements do not apply to a course offered for joint high school and junior college credit to a student as part of the early college education program established under Education Code 29.908 or any other early college program that assists a student in earning a certificate or an associate degree while in high school.

Education Code 130.008(a-1), (a-2), (d)

Student Eligibility

A high school student is eligible to enroll in dual credit courses if the student:

1. Is not a degree-seeking student as defined in 19 Administrative Code 4.83(10);
2. Demonstrates that he or she is exempt under the provisions of the Texas Success Initiative as set forth in 19 Administrative Code 4.54;
3. Demonstrates college readiness by achieving the minimum passing standards under the provisions of the Texas Success Initiative on relevant section(s) of an assessment instrument; or

4. Meets the eligibility requirements for a Texas First Diploma under 19 Administrative Code 21.52 (relating to Eligibility for Texas First Diploma).

An institution may impose additional requirements for enrollment in specific dual credit courses that do not conflict with 19 Administrative Code, Chapter 4, Subchapter D.

An institution is not required under these provisions to offer dual credit courses for high school students.

19 TAC 4.85(b)

Transcript

An institution or high school shall immediately transcript the credit earned by a student upon a student's completion of the performance required in the course. *19 TAC 4.85(h)*

Faculty Selection, Supervision, and Evaluation

An institution shall apply the standards for selection, supervision, and evaluation for instructors of dual credit courses as required by the institution's accreditor. A high school teacher may only teach a high school course offered through a dual credit agreement if the teacher is approved by the institution offering the dual credit course. *19 TAC 4.85(e)*

Qualified Instructor

A course offered for joint high school and junior college credit must be taught by a qualified instructor approved or selected by the public junior college. An instructor is qualified if the instructor holds:

1. A doctoral or master's degree in the discipline that is the subject of the course;

2. A master's degree in another discipline with a concentration that required completion of a minimum of 18 graduate semester hours in the discipline that is the subject of the course; or

3. For a course that is offered in an associate degree program and that is not designed for transfer to a baccalaureate degree program:

    a. A degree described above;

    b. A baccalaureate degree in the discipline that is the subject of the course; or

    c. An associate degree and demonstrated competencies in the discipline that is the subject of the course, as determined by the THECB.

Not later than the 60th day after receipt, a public junior college shall approve or reject an application for approval to teach a course at a high school that is submitted by an instructor employed

by the district with which the junior college entered into an agreement to offer the course.

Education Code 130.008(g), (h)

Attendance Accounting

The time during which a student attends a dual credit course, including a course provided under the college credit program, shall be counted as part of the minimum instructional hours required for a student to be considered a full-time student in average daily attendance. *Education Code 48.005(g)* [See FEB]

The commissioner of education may approve instructional programs provided off campus by an entity other than a district as a program in which participation by a student may be counted for purposes of determining average daily attendance. *Education Code 48.007(a)*

Reporting Off-Campus Programs

A board may adopt a policy that allows a student to participate in an off-campus instructional program. The program must be provided only by an institution of higher education that is accredited by one of the regional accrediting associations specified in 19 Administrative Code 74.25 (High School Credit for College Courses).

To be eligible, a student must:

1. Be in grade 11 or 12;
2. Have demonstrated college readiness as outlined in the requirements for participation in dual credit programs in the *Student Attendance Accounting Handbook*;
3. Meet any eligibility requirements adopted by the institution of higher education; and
4. Have the approval of the high school principal or other school official designated by the district.

The off-campus program must comply with rules adopted by the THECB in the Texas Administrative Code, Title 19, Part 1, with respect to teacher qualifications.

19 TAC 129.1031

Time that a student participates in an off-campus instructional program approved by the commissioner under Education Code 48.007(a) shall be counted as part of the minimum number of instructional hours required for a student to be considered a full-time student in average daily attendance. *Education Code 48.005(h)*

Dual Credit Agreement

For any dual credit partnership between a district and an institution, an agreement must be approved by the governing boards or designated authorities (e.g., superintendent) of both the public district and the institution prior to the offering of such courses.

Any agreement entered into or renewed between an institution and a district, including a memorandum of understanding or articulation agreement, shall include the following elements.

Any dual credit agreement must also address:

1. Eligible courses;
2. Student eligibility;
3. Location of class;
4. Student composition of class;
5. Faculty selection, supervision, and evaluation;
6. Course curriculum, instruction, and grading;
7. Academic policies and student support services;
8. Transcripting of credit;
9. Funding, including the sources of funding for courses offered under the program, including, at a minimum, the sources of funding for tuition, transportation, and any required fees, instructional materials, or textbooks for students participating in the program, including for students eligible to take dual credit courses at no cost to the student under the FAST program [see below];
10. All requirements for joint implementation of the FAST program, including ensuring the accurate and timely exchange of information necessary for an eligible student to enroll at no cost in a dual credit course, for eligible public schools and students participating in the FAST program;
11. Defined sequences of courses that apply to academic or career and technical education program requirements at the institution or industry-recognized credentials, where applicable;
12. Specific program goals aligned with the statewide goals developed under Education Code 28.009(b-1), 130A.004, and 130A.101(c)(3);
13. Coordinated advising strategies and terminology related to dual credit and college readiness, including strategies to assist students in selecting courses that will satisfy applicable

high school and college requirements for the student's intended program;

14. Provision for the alignment of endorsements described in EIF, offered by the district and dual credit courses offered under the agreement that apply toward those endorsements with postsecondary pathways and credentials at the institution and industry-recognized credentials;

15. Identification of tools, including online resources developed by TEA, the Coordinating Board, or the Texas Workforce Commission, to assist counselors, students, and families in selecting endorsements offered by the district and college courses offered by the institution under the agreement;

16. A procedure for establishing the course credits that may be earned under the agreement, including developing a course equivalency crosswalk or other method of identifying the number of high school and college credits that may be earned for each course completed through the program;

17. A description of the academic supports and, if applicable, other support that will be provided to students participating in the program (e.g., transportation to and from a college campus);

18. The respective roles and responsibilities of the institution of higher education and the district in providing the program and ensuring the quality of instruction and instructional rigor of the program;

19. A requirement that the district and the institution consider the use of free or low-cost open educational resources in courses offered under the program; and

20. Designation of at least one employee of the district or private school, or the institution as responsible for providing academic advising to a student who enrolls in a dual credit course under the program before the student begins the course.

19 TAC 4.84(a)-(b)

Website Posting of Agreement

Each agreement must be posted each year on the institution of higher education's and the district's respective internet websites. *19 TAC 4.84(c)*

FAST Program

Eligibility

A student is eligible to enroll at no cost in a dual credit course under the Financial Aid for Swift Transfer (FAST) program if the student is enrolled in and eligible for Foundation School Program

funding at a high school in a Texas school district and in a dual credit course at a participating institution of higher education that has entered into a dual credit agreement with the student's district as set out in 19 Administrative Code 4.84 and the student was educationally disadvantaged at any time during the school year in which the student enrolls in the dual credit course or the four school years preceding the student's enrollment in the dual credit course as certified to the institution by the eligible student's district, or other means authorized by rule.

A district's notice to the institution regarding a student's status as educationally disadvantaged shall occur through the district's notice to TEA, unless otherwise provided by rule.

19 TAC 13.503(a)-(b)

To be considered educationally disadvantaged, a student must meet the income requirements for eligibility under the National School Lunch Program (NSLP), authorized by 42 United States Code 1751, et seq. A district may use the following approved methods for determining student eligibility for the FAST program:

1. Parent certification, where the parent or guardian asserts meeting the income requirements for eligibility under this subsection;

2. Direct certification, where eligible children are certified for free meals without the need for a household application based on household participation in one or more federal assistance programs; or

3. Direct verification, where public records are used to verify a student's eligibility for free or reduced-price meals when verification of student eligibility is required.

A district with one or more campuses not participating in the NSLP may derive an eligible student count by an alternative method as determined by TEA.

19 TAC 102.1097

A student otherwise described by Education Code 28.0095(c) is eligible to enroll at no cost in a dual credit course under the program if the student has graduated from high school but is enrolled at a campus designated as a P-TECH school or in a district participating in a R-PEP partnership and the student is completing a course of study offered through an articulation agreement or MOU with an institution of higher education and the district in the P-TECH or R-PEP program. A district may use Foundation School Program funds to educate a student who has graduated from high school

but is enrolled in the district in a program through which the student may earn dual credit, including the P-TECH and R-PREP program. *Education Code 28.0095(c-1), 48.0035(2)*

"Dual credit course" is defined by 19 Administrative Code 4.83.

District Determination

A district shall, on the enrollment of a student in grades 9 through 12 in a dual credit course, determine whether the student meets the above criteria for the program and notify the institution of higher education that offers the dual credit course in which the student is enrolled of the district's determination.

A district may make the determination based on the district's records, TEA's records, or any other method authorized by commissioner or THECB rule. If the district bases the determination on a method other than TEA's records, the district shall report the method used and the data on which the method is based to TEA for purposes of verification.

Education Code 28.0095(a)(3), (c), (3)

For more information about the FAST Program, see 19 Administrative Code 102.1097.

Instructional Partnerships with Community College Districts

Types of instructional partnerships between a district and a community college district include:

1. Award of High School Credit Only (see High School Credit-Only Courses, below).
2. Award of Dual Credit (see Dual Credit Programs, above).
3. Tech-Prep Programs (see Tech-Prep Programs, below).
4. Remedial or Developmental Instruction for High School Graduates (see Remedial Programs, below).
5. College Preparatory Courses for High School Students (see College Preparatory Courses, below)

19 TAC 9.143

Agreement

For any educational partnership between a district and a community college district, an agreement must be approved by the board or designee of both the district and the college district. The partnership agreement must address the following:

1. Student eligibility requirements.
2. Faculty qualifications.
3. Location and student composition of classes.

4. Provision of student learning and support services.
5. Eligible courses.
6. Grading criteria.
7. Transcripting of credit.
8. Funding provisions.

19 TAC 9.144

High School Credit-Only Courses

A district may contract with a community college district for the college district to provide coursework necessary for students to complete high school as described in 19 Administrative Code 9.125. The district and college district shall negotiate an agreed cost for instruction. *19 TAC 9.125, .143(a)*

Tech-Prep Programs

A district may partner with a college district to allow for the articulation of high school technical courses taught by the high school to high school students for immediate high school credit and later college credit, to be awarded upon enrollment of the students in the college district in an associate degree or certificate program. *19 TAC 9.143(c)*

Remedial Programs

A board may contract, as outlined in 19 Administrative Code 9.125, with the board of the community college district in which a district is located for the college district to provide remedial programs for students enrolled in a district's secondary schools in preparation for graduation from secondary school and entrance into college.

Community colleges may provide instruction to high school students for either remedial course work to prepare students to pass the required State of Texas Assessments of Academic Readiness End-of-Course (STAAR EOC) assessments or developmental course work to prepare the students to pass an assessment instrument approved by the board under 19 Administrative Code 4.56 (Assessment Instruments).

High school students who have passed all of the STAAR EOC assessments with the high school graduation standard may be permitted to enroll in state-funded developmental courses offered by a community college at the college's discretion if a need for such course work is indicated by student performance on an assessment instrument approved by the board under 19 Administrative Code 4.56 (see below).

The district and college district shall negotiate an agreed cost for instruction. Remedial and developmental courses may not be offered for dual credit.

Education Code 130.090; 19 TAC 9.125, .143(d), .146

College Preparatory Courses

College preparatory courses are locally developed through a memorandum of understanding created between school districts and community colleges. *19 TAC 9.147*

Certain Academies

A district shall grant a student a maximum of two years' credit toward the academic course requirements for high school graduation for courses successfully completed at the Texas Academy of Leadership in the Humanities (at Lamar University — Beaumont), the Texas Academy of Mathematics and Science (at the University of Texas — Brownsville or University of North Texas — Denton), or the Texas Academy of International Studies (at Texas A&M University — Laredo). *Education Code 28.024*

Off-Campus Program Provided by an Institution of Higher Education

The commissioner of education may approve instructional programs provided off campus by an entity other than a district as a program in which participation by a student may be counted for purposes of determining average daily attendance. *Education Code 48.007(a)*

Reporting Off-Campus Programs

A board may adopt a policy that allows a student to participate in an off-campus instructional program. The program must be provided only by an institution of higher education that is accredited by one of the regional accrediting associations specified in 19 Administrative Code 74.25 (High School Credit for College Courses).

To be eligible, a student must:

1. Be in grade 11 or 12;
2. Have demonstrated college readiness as outlined in the requirements for participation in dual credit programs in the *Student Attendance Accounting Handbook*;
3. Meet any eligibility requirements adopted by the institution of higher education; and
4. Have the approval of the high school principal or other school official designated by the district.

The off-campus program must comply with rules adopted by the THECB in the Texas Administrative Code, Title 19, Part 1, with respect to teacher qualifications.

19 TAC 129.1031(a), (b), (e)

Time that a student participates in an off-campus instructional program approved by the commissioner under Education Code 48.007(a) shall be counted as part of the minimum number of instructional hours required for a student to be considered a full-time student in average daily attendance. *Education Code 48.005(h)*

Distance Learning and Correspondence Courses

Credit toward state graduation requirements may be granted for distance learning and correspondence courses only as follows:

1. The institution offering the correspondence course is The University of Texas at Austin, Texas Tech University, or another public institution of higher education approved by the commissioner of education.
2. Students may earn course credit through distance learning technologies such as satellite, internet, two-way videoconferencing, online courses, the Texas Virtual School Network (TXVSN), and instructional television.
3. The distance learning and correspondence courses must include the state-required essential knowledge and skills for such a course.

19 TAC 74.23

Virtual and Hybrid Courses

A district or consortium of districts may deliver instruction through hybrid courses, virtual courses, full-time hybrid programs, and full-time virtual programs. *Education Code 30B.006*

Definitions

“Full-time hybrid program” means a full-time educational program offered by a district or open-enrollment charter school campus in which a student is in person for less than 90 percent of the minutes of instruction provided in a school year and the instruction and content may be delivered synchronously or asynchronously over the internet, in person, or through other means.

“Full-time virtual program” means a full-time educational program offered by a district or open-enrollment charter school campus in which a student is in attendance in person minimally or not at all and the instruction and content are delivered synchronously or asynchronously primarily over the internet.

“Hybrid course” means a course in which a student is in attendance in person for less than 90 percent of the minutes of instruction provided and the instruction and content may be delivered synchronously or asynchronously over the internet, in person, or through other means.

“Virtual course” means a course in which instruction and content are delivered synchronously or asynchronously primarily over the internet.

Education Code 30B.001

Notice of Option to Enroll

A district shall notify parents and students of the option to enroll in a virtual or hybrid course offered by the district in which the student is enrolled or by another district or school under Education Code

Chapter 30B at the time and in the manner the district informs students and parents about courses that are offered in the district's traditional classroom setting. *Education Code 26.0031(a)*

A district may not actively discourage a student, including by threat or intimidation, from enrolling in a virtual or hybrid course. *Education Code 26.0031(b-1)*

Denial of Request to Enroll

A district in which a student is enrolled as a full-time student may not deny the request of a parent to enroll the student in a virtual or hybrid course offered by the district in which the student is enrolled or by another district or school under Chapter 30B, except as provided below. *Education Code 26.0031(b)*

A district may deny a request to enroll a student in a virtual or hybrid course if:

1. A student attempts to enroll in a course load that is inconsistent with the student's high school graduation plan or requirements for college admission or earning an industry certification;
2. The student requests permission to enroll in a virtual or hybrid course at a time that is not consistent with the enrollment period established by the district providing the course; or
3. The district determines that the cost of the course is too high.

Education Code 26.0031(b), (c)

Notice of Appeal

A district that denies a request to enroll a student in a virtual or hybrid course must provide a written explanation of the denial to the student and the student's parent. The written explanation must provide notice of the student's ability to appeal the decision and an explanation of the appeal process, including the process of pursuing a final appeal heard by the board. A determination made by the board is final and may not be appealed. *Education Code 26.0031(e)*

Information About Virtual and Hybrid Instruction

A district shall make information about virtual and hybrid courses available to students and parents at the time students ordinarily select courses and may provide that information to students and parents at other times as determined by the district. *Education Code 30B.006(d)*

Equipment

A district is not required to provide a student with home computer equipment or internet access for a virtual course provided by a district. *Education Code 30B.004*

Course Quality Requirements

A district that offers a hybrid or virtual course under Education Code Chapter 30A must certify to the commissioner that the course:

1. Includes the appropriate TEKS adopted under Education Code Chapter 28, Subchapter A;
2. Provides instruction at the appropriate level of rigor for the grade level at which the course is offered and will prepare a student enrolled in the course for the student's next grade level or subsequent course in a similar subject matter; and
3. Meets standards for hybrid or virtual courses adopted by the commissioner.

If the commissioner has not adopted applicable standards for hybrid or virtual courses, a district that offers a hybrid or virtual course must instead certify to the commissioner that the course meets the National Standards for Quality Online Courses published by the Virtual Learning Leadership Alliance, Quality Matters, and DLAC, or a successor publisher.

Education Code 30B.051

Extracurricular Participation

A student enrolled in a virtual or hybrid course, program, or campus offered under Education Code Chapter 30B may participate in an extracurricular activity sponsored by or sanctioned by the district in which the student is enrolled or by the University Interscholastic League in the same manner as other district students. *Education Code 30B.005*

Rights of Teachers

A district may not require a classroom teacher to provide both virtual instruction and in-person instruction for a course offered under Chapter 30B during the same class period. The commissioner may waive this requirement for courses included in the enrichment curriculum. *Education Code 30B.053(a)*

This prohibition does not apply to a requirement that a classroom teacher simulcast the teacher's in-person instruction provided that the teacher is not required to interact with the student's observing the instruction virtually. *Education Code 30B.053(a-1)*

A classroom teacher may not provide instruction for a hybrid or virtual course offered under Education Code Chapter 30B unless:

1. The teacher has received appropriate professional development in hybrid or virtual instruction, as determined by the district at which the teacher is employed; or

2. The district has determined that the teacher has sufficient previous experience to not require the professional development described above.

A district may not directly or indirectly coerce any classroom teacher hired to provide in-person instruction to agree to an assignment to teach a hybrid or virtual course.

Education Code 30B.053

Assessments

An assessment instrument administered under Education Code 39.023 or 39.025 to a student enrolled in a hybrid or virtual course shall be administered to the student in the same manner in which the assessment instrument is administered to a student enrolled in an in-person course at the student's district. *Education Code 30B.054*

Tuition and Fees

A district may charge tuition and fees for a virtual or hybrid course provided to a student who is not eligible to enroll in a public school in this state or is not enrolled in the district. *Education Code 30B.055*

Attendance for Credit or Grade

A district shall establish the participation necessary to earn credit or a grade for a hybrid or virtual course offered by the district. *Education Code 30B.056*

TEA Publication of Available Virtual Courses

The Texas Education Agency (TEA) shall publish a list of virtual courses offered by districts and open-enrollment charter schools that includes whether the course is available to a student who is not otherwise enrolled in the offering of the district or school, the cost of the course, and information regarding any third-party provider involved in the delivery of the course. A district shall provide TEA information required to publish this list. *Education Code 30B.057*

Full-time Hybrid and Virtual Campuses

A district may operate a full-time hybrid campus or a full-time virtual campus if authorized by the commissioner. *Education Code 30B.101*

Definitions

"Full-time hybrid campus" means a district or open-enrollment charter school campus at which at least 50 percent of the enrolled students are enrolled in a hybrid program authorized under Education Code Chapter 30B, Subchapter C.

Requirements

The commissioner shall adopt rules establishing the requirements for and process by which a district may apply for authorization to operate a full-time hybrid campus or full-time virtual campus. The rules may require certain written application materials and interviews and shall require a district to:

1. Engage in a year of planning before offering a course under Education Code Chapter 30B to verify the course is designed in accordance with high-quality criteria;

2. Develop an academic plan that incorporates curriculum and instructional practices aligned with the appropriate TEKS, monitoring of the progress of student performance and interventions, a method for meeting the needs of and complying with federal and state requirements for special populations and at-risk students, and compliance with Education Code Chapter 30B;

3. Develop an operations plan that addresses staffing models, the designation of selected school leaders, professional development for staff, student and family engagement, school calendars and schedules, student enrollment eligibility, cybersecurity and student data privacy, and any educational services to be provided by a private or third-party; and

4. Demonstrate the capacity to execute the district's plan successfully.

Education Code 30B.101(b)

A full-time hybrid campus or full-time virtual campus must include:

1. At least one grade level in which an assessment instrument is required to be administered under Education Code 39.023(a) or (c), including each subject or course for which an assessment instrument is required in that grade level;

2. Sufficient grade levels, as determined by the commissioner, to allow for the annual evaluation of the performance of students who complete the courses offered; or

3. For a campus that does not meet the requirements of items 1 or 2, another performance evaluation measure approved by the commissioner during the authorization process.

Education Code 30B.010(c)

Student Eligibility

A student eligible to enroll in a Texas public school is eligible to enroll in a full-time hybrid campus. *Education Code 30B.103*

A student is eligible to enroll in a full-time virtual campus if the student:

1. Attended a Texas public school for a minimum of six weeks in the current school year or in the preceding school year;

2. Is, in the school year in which the student first seeks to enroll in the full-time virtual campus, enrolled in the first grade or a lower grade level;

3. Was not required to attend public school in Texas due to non-residency during the preceding school year;

4. Is a dependent of a member of the U.S. military who has been deployed; or

5. Has been placed in substitute care in Texas.

Education Code 30B.103

Revocation

Unless revoked, the commissioner's authorization for a full-time hybrid campus or full-time virtual campus continues indefinitely.

The commissioner shall revoke the authorization of a full-time hybrid campus or full-time virtual campus if the campus has been assigned, for the 3 preceding years:

1. A needs improvement or unacceptable performance rating;

2. A rating of performance that needs improvement or unacceptable on a performance; or

3. Any combination of these ratings.

Education Code 30B.102

The commissioner may revoke an authorization or require intervention based on a special investigation conducted under Education Code 39.003. *Education Code 30B.102(c)*

An appeal by a district of a revocation of an authorization that results in the closure of a campus must be made under Education Code 39A.301. *Education Code 30B.102(e)*

Student Rights

A student enrolled in a district may not be compelled to enroll in a full-time hybrid or full-time virtual campus. A district must offer the option for a student's parent to select in-person instruction for the student. *Education Code 30B.104*

Private and Third Party Providers

A district shall provide notice to the commissioner of the use of or change in affiliation of a private or third party acting as a whole program virtual instruction provider for a full-time hybrid or virtual campus or program. *Education Code 30B.151*

Development Grants

TEA shall provide grants and technical assistance to districts to aid in the establishment of high-quality full-time hybrid or full-time virtual campuses. *Education Code 30B.202*

Note: Education Code Chapter 30A relating to the Texas Virtual School Network has been repealed. A district providing an electronic course or full-time program under Chapter 30A may continue to provide that course or full-time program as if Chapter 30A were still in effect until the end of the 2026-27 school year.

Grading Policy

A district shall adopt a grading policy, including provisions for the assignment of grades on class assignments and examinations, before each school year. A district grading policy:

1. Must require a classroom teacher to assign a grade that reflects the student's relative mastery of an assignment;
2. May not require a classroom teacher to assign a minimum grade for an assignment without regard to the student's quality of work; and
3. May allow a student a reasonable opportunity to make up or redo a class assignment or examination for which the student received a failing grade.

Education Code 28.0216

Finality of Grade

An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with the district grading policy applicable to the grade, as determined by the board.

A determination by the board is not subject to appeal.

This subsection does not prohibit an appeal related to a student's eligibility to participate in extracurricular activities under Education Code 33.081.

Education Code 28.0214

Student Election Clerks

A student who is appointed as a student election clerk under Election Code 32.0511, or as a student early voting clerk under Election Code 83.012, may apply the time served toward:

1. A requirement for a school project at the discretion of the teacher who assigned the project; or
2. A service requirement for participation in an advanced academic course program at the discretion of the program sponsor or a school-sponsored extracurricular activity at the discretion of the school sponsor.

Education Code 33.092

Progress Reports and Conferences

A board shall adopt a policy that:

1. Provides for at least two opportunities for in-person conferences during each school year between each parent of a child enrolled in the district and the child's teachers;

2. Requires a district, at least once every 12 weeks, to give written notice to a parent of a student's performance in each class or subject; and

3. Requires a district, at least once every three weeks, or during the fourth week of each nine-week grading period, to give written notice to a parent if a student's performance in a foundation curriculum subject [see EHAA] is consistently unsatisfactory, as determined by the district.

The notice required by items 2 and 3 must provide for the signature of the student's parent and must be returned to the district.

A district that uses an electronic platform for communicating student grade and performance information to parents may permit a parent to sign a required notice electronically, so long as the district retains a record verifying the parent's acknowledgment of the required notice. A district that accepts electronic signatures must offer parents the option to provide a handwritten signature.

"Parent" includes a guardian, conservator, or other person having lawful control of a student.

Exceptions

These requirements do not apply to a student who:

1. Is 18 or older and living in a different residence than the student's parents;

2. Is married; or

3. Has had the disabilities of minority removed for general purposes.

Education Code 28.022

Dyslexia Progress Reports

For information regarding required progress reports for students receiving dyslexia instruction, see EHB.

Notice of Performance Rating

The first written notice of a student's performance that a district gives during a school year under Education Code 28.022(a)(2) [see Progress Reports, item 2, above] must include a statement of whether the campus at which the student is enrolled has been awarded a distinction designation under Education Code Chapter 39, Subchapter G or has been identified as an unacceptable campus under Education Code Chapter 39A, and an explanation of the information's significance. [See AIB] *Education Code 39.361*

Notice of Student Performance

The district shall provide a record of the comparisons of student performance made under Education Code 39.034 and provided to the district under Education Code 39.302 in a written notice to the student's parent or other person standing in parental relationship.

For a student who failed to perform satisfactorily as determined under either performance standard under Education Code 39.0241 on an assessment instrument administered under Education Code 39.023(a), (c), or (l), the district shall include in the notice specific information relating to access to educational resources at the appropriate assessment instrument content level, including assessment instrument questions and answers released under Education Code 39.023(e).

Education Code 39.303

Relation to Essential Knowledge and Skills

The District shall establish instructional objectives that relate to the essential knowledge and skills for grade-level subjects or courses. These objectives shall address the skills needed for successful performance in the next grade or next course in a sequence of courses.

Assignments, tests, projects, classroom activities, and other instructional activities shall be designed so that each student's performance indicates the level of mastery of the designated District objectives.

Guidelines for Grading

The Superintendent or designee shall ensure that each campus or instructional level develops guidelines for teachers to follow in determining grades for students. These guidelines shall ensure that grading reflects a student's relative mastery of an assignment and that a sufficient number of grades are taken to support the grade average assigned. Guidelines for grading shall be clearly communicated to students and parents.

The District shall permit a student who meets the criteria detailed in the grading guidelines a reasonable opportunity to redo an assignment or retake a test for which the student received a failing grade.

Progress Reporting

The District shall issue grade reports/report cards every nine weeks on a form approved by the Superintendent or designee. Performance shall be measured in accordance with this policy and the standards established in EIE.

Interim Reports

Interim progress reports shall be issued for all students after the third and sixth week of each grading period. Supplemental progress reports may be issued at the teacher's discretion.

Conferences

Each year, the District shall provide at least two opportunities for in-person conferences between each parent and the student's teacher. Additional conferences may be requested by a teacher or parent as needed.

Academic Dishonesty

A student found to have engaged in academic dishonesty shall be subject to grade penalties on assignments or tests and disciplinary penalties in accordance with the Student Code of Conduct. Academic dishonesty includes cheating or copying the work of another student, plagiarism, the use of artificial intelligence to complete an assignment in part or in whole unless approved by the classroom teacher [see CQD], and unauthorized communication between students during an examination. The determination that a student has engaged in academic dishonesty shall be based on the judgment of the classroom teacher or another supervising professional employee, taking into consideration written materials, observation, information from students, or the use of an artificial intelligence detection tool selected by the District.

Table of Contents

High School Diploma 2
FAFSA Required 2
Direct Admissions Data Sharing Election 4
Individual Graduation Committee 4
Special Education 7
Posthumous Diploma 7
Diplomas for Veterans 7
Texas First Early High School Completion Program 8
Notice Upon Enrollment 8
Personal Graduation Plan 8
Junior High or Middle School PGP 8
High School PGP 9
Early Graduation 10
State Graduation Requirements 10
Students Entering Grade 9 10
Students Who Entered Grade 9 Before the 2014-15 School Year 17
Transfers from Out-of-State or Nonpublic Schools 21
Graduation of Students Receiving Special Education Services 21
Modified Curriculum and Content 21
Employability and Self-Help Skills 21
Summary of Academic Achievement and Evaluation 22
Graduation of Military Dependents 24
Course Waiver 24
Transfers During Senior Year 24
Substitute Passing Standard 25
Graduation of Student Who Is Homeless or in Conservatorship of DFPS 25

High School Diploma

A student may graduate and receive a diploma only if the student:

1. Successfully completes the curriculum requirements identified by the State Board of Education (SBOE) [see State Graduation Requirements, below], has performed satisfactorily on applicable state assessments [see EKB], and complies with the financial aid application requirements in Education Code 28.0256 [see below] and the direct admissions data sharing election [see below]; or
2. Successfully completes an individualized education program (IEP) developed under Education Code 29.005. [See EHBAB]

Education Code 28.025(c)

Note: Education Code 28.0256 applies beginning with students enrolled at the 12th grade level during the 2021-22 school year.

FAFSA Required

Before graduating from high school, each student must complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA), except as provided below.

A student is not required to comply with the above provision if:

1. The student's parent or other person standing in parental relation submits a signed form indicating that the parent or other person authorizes the student to decline to complete and submit the financial aid application;
2. The student signs and submits the form described above on the student's own behalf if the student is 18 years of age or older or the student's disabilities of minority have been removed for general purposes under Family Code Chapter 31; or
3. A school counselor authorizes the student to decline to complete and submit the financial aid application for good cause, as determined by the school counselor.

If a school counselor notifies a district whether a student has complied with this section for purposes of determining whether the student meets high school graduation requirements under Education Code 28.025, the school counselor may only indicate whether the student has complied with this section and may not indicate the manner in which the student complied, except as necessary for the district to comply with the commissioner’s rules.

A school counselor may not indicate that a student has not complied with this section if the district fails to provide the required form to the student or the student's parent or other person standing in parental relation to the student.

Education Code 28.0256; 19 TAC 74.11(b)

Opt-Out Form

The board shall adopt the standard opt-out form provided by the Texas Education Agency (TEA).

The opt-out form shall be available in English, Spanish, and any other language spoken by a majority of the students enrolled in a bilingual education or special language program in the district. A district is responsible for translations not provided by TEA.

The opt-out form must include the student's signature of intent to decline to complete a financial aid application prior to the student's anticipated graduation date.

19 TAC 74.1023(c)

Notification

A district shall provide students with the notifications regarding the financial aid application requirement, in accordance with 19 Administrative Code 74.1023(d).

Proof of Submission

A district shall require one of the following methods of proof that a student has completed and submitted the FAFSA or TASFA.

For completion and submission of the FAFSA:

1. ApplyTexas Counselor Suite FAFSA data;
2. Notification from the U.S. Department of Education that demonstrates a student has completed and submitted a FAFSA; or
3. A local policy developed by a district for the method by which a student must provide proof that the student has completed a FAFSA.

A district shall develop a local policy for the method by which a student must provide proof that the student has completed a TASFA.

19 TAC 74.1023(e)

Information Submission and Confidentiality

A district shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) not later than December 1 of each school year for students awarded diplomas in the previous school year the number of students who completed and submitted a financial aid application and the number of students who submitted an exception.

A district shall maintain student financial aid application information securely and ensure compliance with federal law regarding the confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information [see FL].

19 TAC 74.1023(f)-(g)

Direct Admissions Data Sharing Election

Before graduating from high school, each student must elect whether to opt in to allowing the Texas Higher Education Coordinating Board to share the student's data and education records, as necessary, with institutions of higher education to allow the student to participate in the direct admissions program established by the coordinating board. *Education Code 28.0257(b)* [See also FL(LEGAL) for provisions regarding admissions data sharing.]

Opt-out

A student is not required to comply with this requirement if:

1. The student's parent or other person standing in parental relation submits a signed form indicating that the parent or other person authorizes the student to decline to complete and submit information necessary to participate in the direct admissions program;

2. The student signs and submits the form declining to complete and submit information necessary to participate in the direct admissions program if the student is 18 or older or the student's disabilities of minority have been removed; or

3. A school counselor authorizes in writing the student to decline to complete and submit the information necessary to participate in the direct admissions program.

Each school district shall use a form adopted by the coordinating board to allow a student to opt out.

Education Code 28.0257(c)-(d)

Individual Graduation Committee

A student may receive a diploma if the person is eligible for a diploma as determined by an individual graduation committee (IGC) established under Education Code 28.0258. *Education Code 28.025(c-6)*

A student receiving special education services is not subject to the IGC requirements in Education Code 28.0258 or 19 Administrative Code 74.1025. A student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an end-of-course (EOC) assessment to graduate. *19 TAC 74.1025(n)* [See EHBAB]

For each 11th or 12th grade student who has failed to comply with the EOC assessment instrument performance requirements under Education Code 39.025 for not more than two courses, the district shall establish an IGC at the end of or after the student's 11th grade year to determine whether the student may qualify to graduate. A student may not qualify to graduate as a result of an IGC decision before the student's 12th grade year.

The IGC shall be composed of:

1. The principal or principal's designee;
2. For each EOC assessment instrument on which the student failed to perform satisfactorily, the teacher of the course;
3. The department chair or lead teacher supervising the teacher(s) above; and
4. As applicable:
    a. The student's parent or person standing in parental relation to the student;
    b. A designated advocate if the parent is unable to serve; or
    c. The student, at the student's option, if the student is at least 18 years of age or is an emancipated minor.

The superintendent shall establish procedures for convening the committee.

The district shall provide an appropriate translator, if available, for a parent, advocate, or student who is unable to speak English.

Education Code 28.0258(a)-(c), (c-2); 19 TAC 74.1025(b)

A district may not establish an initial IGC for eligible students after June 10 or before the start of the next school year. Once the IGC has been established, it is the original IGC for that student.

If a student leaves a district after an original IGC has been established and before that original IGC awards a high school diploma to the student, any other district that later enrolls the student shall request information from the student's original IGC of record and shall implement the original IGC recommendations to the extent possible.

Alternate Members

In the event that the teacher identified in item 2 above is unavailable, the principal shall designate as an alternate member of the committee a teacher certified in the subject of the EOC assess-

ment on which the student failed to perform satisfactorily and who is most familiar with the student's performance in that subject area.

In the event that the individual identified above in item 3 above is unavailable, the principal shall designate as an alternate member of the committee an experienced teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is familiar with the content of and instructional practices for the applicable course.

In the event that the student's parent or person standing in parental relation to the student is unavailable to participate in the IGC, the principal shall designate an advocate with knowledge of the student to serve as an alternate member of the committee.

19 TAC 74.1025(c), (e), (g)-(i)

Notice

A district shall ensure a good faith effort is made to timely notify the appropriate person described under item 4 above of the time and place for convening the IGC and the purpose of the committee. The notice must be provided in person or by regular mail or email; clear and easy to understand; and written in English, in Spanish, or, to the extent practicable, in the native language of the appropriate person. *Education Code 28.0258(d)*

Curriculum Requirements

To be eligible to graduate and receive a high school diploma from the IGC, a student must successfully complete the curriculum requirements required for high school graduation. [See State Graduation Requirements, below] *Education Code 28.0258(e)*

Additional Requirements to Graduate

A student's IGC shall recommend additional requirements by which the student may qualify to graduate, including additional remediation; and for each EOC assessment instrument on which the student failed to perform satisfactorily:

1. The completion of a project related to the subject area of the course that demonstrates proficiency in the subject area; or

2. The preparation of a portfolio of work samples in the subject area of the course, including work samples from the course that demonstrate proficiency in the subject area.

A student may submit to the IGC coursework previously completed to satisfy a recommended additional requirement.

Education Code 28.0258(f), (g)

In determining whether a student is qualified to graduate, the committee shall consider the criteria at Education Code 28.0258(h) and any other academic information designated for consideration by the board. After considering the criteria, the committee may deter-

mine that the student is qualified to graduate. A student may graduate and receive a high school diploma on the basis of the committee's decision only if the student successfully completes all additional requirements recommended by the committee, the student meets applicable curriculum requirements, and the committee's vote is unanimous. The decision of a committee is final and may not be appealed. *Education Code 28.0258(i)*

Emergent Bilingual Students

For provisions related to an IGC and emergent bilingual students, see EKBA.

Special Education

A student receiving special education services who successfully completes the requirements of his or her IEP, including performance on a state assessment required for graduation, shall receive a high school diploma. A student's ARD committee shall determine if the student will be required to meet satisfactory performance on an assessment for purposes of graduation. *19 TAC 101.3023(a)* [See Graduation of Students Receiving Special Education Services, below, and EKB]

Posthumous Diploma

Beginning with students who would have graduated at the end of the 2019-20 school year, and on request of the student's parent, a district shall issue a high school diploma posthumously to each student who died while enrolled in the district at the end of the school year in which the student was expected to graduate under the regular schedule of school attendance. The high school diploma may not be issued before the graduation date of the class in which the student was enrolled at the time of death.

Exception

A district is not required to issue a posthumous diploma if the student was convicted of a felony offense under Penal Code Title 5 or 6 or adjudicated as having engaged in conduct constituting a felony offense under Penal Code Title 5 or 6.

Education Code 28.0254

Diplomas for Veterans

Notwithstanding any other provision of this policy, a district may issue a high school diploma to a person who is an honorably discharged member of the armed forces of the United States; was scheduled to graduate from high school after 1940 and before 1975 or after 1989; and left school after completing the sixth or a higher grade, before graduating from high school, to serve in:

1. World War II, the Korean War, the Vietnam War, the Persian Gulf War, the Iraq War, or the war in Afghanistan; or

2. Any other war formally declared by the United States, military engagement authorized by the United States Congress, military engagement authorized by a United Nations Security

Council resolution and funded by the United States Congress, or conflict authorized by the president of the United States under the War Powers Resolution of 1973, 50 U.S.C. 1541, et seq.

Education Code 28.0251

Texas First Early High School Completion Program

A district shall allow a student to graduate and receive a high school diploma under the Texas First Early High School Completion Program if, using the standards established by TEA and the Texas Higher Education Coordinating Board and eligible institutions of higher education, the student demonstrates mastery of and early readiness for college in each of the subject areas described by the standards and in a language other than English, notwithstanding any other local or state requirements.

A student who earns a high school diploma through the program is considered to have earned a distinguished level of achievement.

Notice Upon Enrollment

On a student's initial enrollment in high school in a grade level below grade 12 in a district, the district shall provide to the student and the student's parent or guardian information regarding the requirements to earn a high school diploma under the Texas First Early High School Completion Program and the Texas First Scholarship Program.

Education Code 28.0253(e)-(g); 19 TAC 21.52(a)

The notice must include information about the requirement that a student must provide an official copy of their assessment results and transcripts, as applicable, to receive credit for the assessments and credits required to receive early graduation from the program. *19 TAC 21.54*

Personal Graduation Plan

Junior High or Middle School PGP

A principal of a junior high or middle school shall designate a school counselor, teacher, or other appropriate individual to develop and administer a personal graduation plan (PGP) for each student enrolled in the junior high or middle school who:

1. Does not perform satisfactorily on a state assessment instrument; or
2. Is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade level 9, as determined by a district.

A PGP must:

1. Identify educational goals for the student;

2. Include diagnostic information, appropriate monitoring and intervention, and other evaluation strategies;

3. Include an intensive instruction program described in Education Code 28.0213 [see EHBC];

4. Address participation of the student's parent or guardian, including consideration of the parent's or guardian's educational expectations for the student; and

5. Provide innovative methods to promote the student's advancement, including flexible scheduling, alternative learning environments, online instruction, and other interventions that are proven to accelerate the learning process and have been scientifically validated to improve learning and cognitive ability.

Education Code 28.0212

Students Receiving Special Education Services

For a student receiving special education services, the student's ARD committee and the district are responsible for developing the student's PGP.

A student's IEP developed under Education Code 29.005 may be used as the student's PGP.

Education Code 28.0212(c); 19 TAC 89.1050(a) [See EHBAB]

High School PGP

A principal of a high school shall designate a school counselor or school administrator to review PGP options with each student entering grade 9 together with that student's parent or guardian. The PGP options reviewed must include the distinguished level of achievement and endorsements.

Before the conclusion of the school year, the student and the student's parent or guardian must confirm and sign a PGP for the student that identifies a course of study that:

1. Promotes college and workforce readiness and career placement and advancement; and

2. Facilitates the student's transition from secondary to postsecondary education.

A district may not prevent a student and the student's parent or guardian from confirming a PGP that includes pursuit of a distinguished level of achievement or an endorsement.

A student may amend the student's PGP after the initial confirmation of the plan. If a student amends the student's PGP, the school must send written notice to the student's parents regarding the change.

TEA must make available to a district information that explains the advantages of the distinguished level of achievement described by Education Code 28.025(b-15) and each endorsement described by Education Code 28.025(c-1). A district, in turn, shall publish the information from TEA on the internet website of the district and ensure that the information is available to students in grades nine and above and the parents or legal guardians of those students in the language in which the parents or legal guardians are most proficient.

A district is required to provide this information in the language in which the parents or legal guardians are most proficient only if at least 20 students in a grade level primarily speak that language.

Education Code 28.02121

Early Graduation

A parent is entitled to request, with the expectation that the request will not be unreasonably denied, that the parent's child be permitted to graduate from high school earlier than the child would normally graduate, if the child completes each course required for graduation. The decision of a board concerning the request is final and may not be appealed. *Education Code 26.003(a)(3)(C), (b)*
[See FMH, FNG]

State Graduation Requirements

Note: For current state graduation requirements, including those for students who entered grade 9 before the 2007-08 school year but that are not otherwise referenced in this policy, see Education Code 28.025 and 19 Administrative Code Chapter 74.

Students Entering Grade 9

To receive a high school diploma, a student entering grade 9 in the 2014-15 school year and thereafter must complete:

1. Requirements of the foundation high school program under 19 Administrative Code 74.12 [see Foundation High School Program, below];
2. Testing requirements for graduation under 19 Administrative Code Chapter 101 [see EKB]; and
3. Demonstrated proficiency, in grade 8 or higher, as determined by the district, in delivering clear verbal messages; choosing effective nonverbal behaviors; listening for desired results; applying valid critical-thinking and problem-solving processes; and identifying, analyzing, developing, and evaluating communication skills needed for professional and social success in interpersonal situations, group interactions, and personal and professional presentations.

A student shall enroll in the courses necessary to complete the curriculum requirements for the foundation high school program and the curriculum requirements for at least one endorsement.

Education Code 28.025(c); 19 TAC 74.11(a), (d)

Foundation High School Program

A student must earn at least 22 credits to complete the foundation high school program and must demonstrate proficiency in the following core courses:

1. English language arts — 4 credits;
2. Mathematics — 3 credits;
3. Science — 3 credits;
4. Social Studies — 3 credits;
5. Languages other than English — 2 credits;
6. Physical Education — 1 credit;
7. Fine Arts — 1 credit; and
8. Elective courses — 5 credits.

19 TAC 74.12(a)-(b)

Endorsements

A student shall specify in writing an endorsement the student intends to earn upon entering grade 9. *19 TAC 74.13(a)*

A student may earn any of the following endorsements:

1. Science, technology, engineering, and mathematics (STEM);
2. Business and industry;
3. Public services;
4. Arts and humanities; and
5. Multidisciplinary studies.

A district must make at least one endorsement available to students. A district that offers only one endorsement curriculum must offer multidisciplinary studies.

To earn an endorsement a student must demonstrate proficiency in the curriculum requirements for the foundation high school program and, in accordance with 19 Administrative Code 74.13(e), earn:

1. A fourth credit in mathematics;
2. An additional credit in science; and

3. Two additional elective credits.

A course completed as part of the four courses needed to satisfy an endorsement requirement may also satisfy a requirement under the foundation high school program, including an elective requirement. The same course may count as part of the set of four courses for more than one endorsement.

A district shall permit a student to enroll in courses under more than one endorsement before the student's junior year and to choose, at any time, to earn an endorsement other than the endorsement the student previously indicated.

A student must earn at least 26 credits to earn an endorsement, but a student is not entitled to remain enrolled to earn more than 26 credits.

A district may define advanced courses and determine a coherent sequence of courses for an endorsement area, provided that prerequisites in 19 Administrative Code Chapters 110-117, 127, and 130 are followed.

19 TAC 74.13(a)-(d); Education Code 28.025

For more information on endorsements, including the requirements for specific endorsements, see 19 Administrative Code 74.13(e)-(g).

Exception

A student may graduate under the foundation high school program without earning an endorsement if, after the student's sophomore year:

1. The student and the student's parent or person standing in parental relation to the student are advised by a school counselor of the specific benefits of graduating from high school with one or more endorsements; and

2. The student's parent or person standing in parental relation to the student files with a school counselor written permission, on a form adopted by TEA, allowing the student to graduate under the foundation high school program without earning an endorsement.

19 TAC 74.11(e)

Distinguished Level of Achievement

A student may earn a distinguished level of achievement by successfully completing the curriculum requirements for the foundation high school program and the curriculum requirements for at least one endorsement, including four credits in science and four credits in mathematics, including Algebra II. *19 TAC 74.11(f)*

Algebra II Notification

Not later than September 1 of each school year, a district shall notify by regular mail or email the parent of or other person standing in parental relation to each student enrolled in grade 9 or above that the student is not required to complete an Algebra II course to graduate under the foundation high school program. The notification must include information regarding the potential consequences to a student of not completing an Algebra II course, including the impact on eligibility for:

1. Automatic college admission under Education Code 51.803; and
2. Certain financial aid authorized under Title 3 of the Education Code.

Education Code 28.02123

Prerequisites

A student may not be enrolled in a course that has a required prerequisite unless:

1. The student has completed the prerequisite course(s);
2. The student has demonstrated equivalent knowledge as determined by the district; or
3. The student was already enrolled in the course in an out-of-state, an out-of-country, or a Texas nonpublic school and transferred to a Texas public school prior to successfully completing the course.

A district may award credit for a course a student completed without having met the prerequisites if the student completed the course in an out-of-state, an out-of-country, or a Texas nonpublic school where there was not a prerequisite.

19 TAC 74.11(j)-(k)

Dual Credit Courses

Courses offered for dual credit at or in conjunction with an institution of higher education (IHE) that provide advanced academic instruction beyond, or in greater depth than, the essential knowledge and skills for the equivalent high school course required for graduation may satisfy graduation requirements, including requirements for required courses, advanced courses, and courses for elective credit as well as requirements for endorsements. *19 TAC 74.11(i)*

Core Curriculum College Courses

A district shall permit a student to comply with the curriculum requirements under the foundation high school program by successfully completing appropriate courses in the core curriculum of an IHE. A student who has completed the core curriculum of an IHE in accordance with Education Code 61.822, as certified by the IHE in accordance with Education Code 4.28:

1. Is considered to have earned an endorsement by successfully completing the appropriate courses for that endorsement;

2. Is considered to have earned a distinguished level of achievement under the foundation high school program; and

3. Is entitled to receive a high school diploma.

19 TAC 74.11(o)

Languages Other Than English

Students may earn credit for languages other than English in accordance with 19 Administrative Code 74.12(b)(5).

A student who successfully completes a dual language immersion program may satisfy one credit of the two credits required in a language other English in accordance with 19 Administrative Code 74.12(b)(5)(F).

19 TAC 74.12(b)(5)

A student who successfully completes a course in American Sign Language while in elementary school may satisfy one credit of the two credits required in a language other than English. *19 TAC 74.12(b)(5)(G)*

Physical Education

The required credit may be selected from one full credit or a combination of two half credits from two different courses from the following courses:

1. Lifetime Fitness and Wellness Pursuits;

2. Lifetime Recreation and Outdoor Pursuits; and

3. Skill-Based Lifetime Activities.

Other Physical Education Activities

In accordance with local district policy, the required physical education credit may be earned through completion of any TEKS-based course that meets the requirement for 100 minutes of moderate to vigorous physical activity per five-day school week and that is not being used to satisfy another specific graduation requirement. [See Restrictions, below]

In accordance with local district policy, credit for any physical education course may be earned through participation in the following activities:

1. Athletics;

2. Junior Reserve Officer Training Corps (JROTC); and

3. Appropriate private or commercially sponsored physical activity programs conducted on or off campus. A district must apply to the commissioner for approval of such programs, which

may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

a. Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

b. Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

In accordance with local district policy, up to one credit for any one of the required physical education courses may be earned through participation in any of the following activities:

1. Drill team;

2. Marching band; and

3. Cheerleading.

Restrictions

All substitution activities permitted by local district policy must include at least 100 minutes of moderate to vigorous physical activity per five-day school week.

No more than four substitution credits may be earned through any combination of substitutions listed above.

Credit may not be earned more than once for the Lifetime Fitness and Wellness Pursuits course or the Skill-Based Lifetime Activities course. Credit may not be earned more than twice for the Lifetime Recreation and Outdoor Pursuits course.

Student with Disability or Illness

A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit in English language arts, mathematics, science, social studies, or a course that is offered for credit as provided by Education Code 28.002(g-1) for the required physical education credit. A credit allowed to be substituted may not also be used by the student to sat-

isfy a graduation requirement other than completion of the physical education credit. The determination regarding a student's ability to participate in physical activity must be made by:

1. The student's ARD committee if the student receives special education services under Education Code Chapter 29, Subchapter A;

2. The committee established for the student under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794) if the student does not receive special education services under Education Code Chapter 29, Subchapter A but is covered by the Rehabilitation Act of 1973; or

3. A committee, established by the district, of persons with appropriate knowledge regarding the student if each of the committees described above is inapplicable. This committee must follow the same procedures required of an ARD or a Section 504 committee.

19 TAC 74.12(b)(6); Education Code 28.025(b-10)-(b-11)

Community-Based Fine Arts Programs

In accordance with local district policy, the required fine arts credit may be earned through participation in a community-based fine arts program not provided by the school district in which the student is enrolled.

In accordance with local policy, credit may be earned through participation in the community-based fine arts program only if the program meets each of the following requirements:

1. The district must apply to the commissioner for approval of the community-based fine arts program;

2. The board must certify that the program provides instruction in the essential knowledge and skills for fine arts as defined by 19 Administrative Code Chapter 117, Subchapter C;

3. The district must document student completion of the approved activity;

4. The program must be organized and monitored by appropriately trained instructors;

5. The fine arts program may be provided on or off a school campus and outside the regular school day; and

6. Students may not be dismissed from any part of the regular school day to participate in the community-based fine arts program.

The district shall require that instructors of the community-based fine arts program provide the district, at its request, the information necessary to obtain the criminal history record information required for school personnel in accordance with 19 Administrative Code Chapter 153, Subchapter DD, if the community-based program is offered on campus.

Education Code 28.025(b-9); 19 TAC 74.12(b)(7)(B), .1030

Performance Acknowledgments

In accordance with the requirements of 19 Administrative Code 74.14, a student may earn a performance acknowledgment on the student's transcript for:

1. Outstanding performance:
    a. In a dual credit course;
    b. In bilingualism and biliteracy;
    c. On a College Board advanced placement test or international baccalaureate examination;
    d. On an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument used to measure a student's progress toward readiness for college and the workplace; or
    e. On an established, valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities as part of their undergraduate admissions process; or
2. Earning a state-recognized or nationally or internationally recognized business or industry certification or license.

Education Code 28.025(c-5); 19 TAC 74.14

Students Who Entered Grade 9 Before the 2014-15 School Year

All credit for graduation must be earned no later than grade 12. *19 TAC 74.61(b), .71(b)*

Minimum High School Program

A student entering grade 9 prior to the 2014-15 school year who does not choose to complete the curriculum requirements for high school graduation under the foundation high school program must enroll in the courses necessary to complete the curriculum requirements for the Recommended High School Program or the Advanced/Distinguished Achievement High School Program, unless the student, the student's parent or other person standing in parental relation to the student, and a school counselor or school administrator agree in writing signed by each party that the student should be permitted to take courses under the Minimum High School Program, and the student:

1. Is at least 16 years of age;
2. Has completed two credits required for graduation in each subject of the foundation curriculum under Education Code 28.002(a)(1); or
3. Has failed to be promoted to the 10th grade one or more times as determined by the school district.

Students with Disabilities — If an ARD committee makes decisions that place a student with a disability on a modified curriculum in a subject area, the student will be automatically placed in the Minimum High School Program.

Applicability — A student who was permitted to take courses under the Minimum High School Program prior to the 2009-10 school year may remain in the Minimum High School Program.

19 TAC 74.61(c), (d), .71(c), (d)

Requirements — A student must earn at least 22 credits to complete the Minimum High School Program.

A student who entered grade 9 in the 2012-13 or 2013-14 school year must demonstrate proficiency in the program requirements listed at 19 Administrative Code 74.72.

A student who enters grade 9 before the 2012-13 school year must meet the applicable program requirements in 19 Administrative Code Chapter 74, Subchapters D-F.

Education Code 28.025; 19 TAC 74.62, .72

Recommended High School Program — A student who entered grade 9 in the 2012-13 or 2013-14 school year must earn at least 26 credits to complete the Recommended High School Program. A student must demonstrate proficiency in the program requirements listed at 19 Administrative Code 74.73. *Education Code 28.025; 19 TAC 74.63, .73*

Advanced / Distinguished Achievement High School Program — A student who entered grade 9 in the 2012-13 or 2013-14 school year must earn at least 26 credits to complete the Advanced/Distinguished Achievement High School Program. A student must demonstrate proficiency in the program requirements listed at 19 Administrative Code 74.74. *Education Code 28.025; 19 TAC 74.64, .74*

Substitutions — No substitutions are allowed for high school graduation requirements in the Recommended and Advanced/Distinguished Achievement High School Programs, except as provided by State Board rule. *19 TAC 74.63(d), .64(e), .73(d), .74(e)*

AP or IB Courses — College Board advanced placement and international baccalaureate courses may be substituted for required courses in appropriate

areas. These courses may be used as electives in all three high school graduation programs. *19 TAC 74.61(k), .71(i)*

Reading

A district may offer a maximum of 3 credits of reading for state graduation elective credit for identified students if the district:

1. Adopts policies to identify students in need of additional reading instruction;
2. Has procedures that include assessment of individual student needs and ongoing evaluation of each student's progress; and
3. Monitors instructional activities to ensure that student needs are addressed.

Reading credits may be selected from Reading I, II, or III.

19 TAC 74.61(h), .71(f)

College Courses

A student may comply with the curriculum requirements under the Minimum, Recommended, or Advanced/Distinguished Achievement High School Program for each subject of the foundation curriculum and for languages other than English by successfully completing appropriate courses in the core curriculum of an IHE. *19 TAC 74.61(l), .71(j)*

Physical Education Substitutions

In accordance with local district policy, credit for any physical education course may be earned through participation in the following activities:

Other Physical Activity

1. Athletics;
2. JROTC; and
3. Appropriate private or commercially sponsored physical activity programs conducted on or off campus. A district must apply to the commissioner for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:
    a. Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

b. Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

In accordance with local district policy, up to one credit for any one of the physical education courses listed in 19 Administrative Code Chapter 74 [see EHAC] may be earned through participation in any of the following activities:

1. Drill team;
2. Marching band; and
3. Cheerleading.

Restrictions

All substitution activities must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

No more than four substitution credits may be earned through any combination of substitutions listed above.

Student with Disability or Illness

A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit in English language arts, mathematics, science, or social studies for the required physical education credit. A credit allowed to be substituted may not also be used by the student to satisfy a graduation requirement other than completion of the physical education credit. The determination regarding a student's ability to participate in physical activity must be made by:

1. The student's ARD committee if the student receives special education services under Education Code Chapter 29, Subchapter A;
2. The committee established for the student under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794) if the student does not receive special education services under Education Code Chapter 29, Subchapter A but is covered by the Rehabilitation Act of 1973; or
3. A committee, established by the district, of persons with appropriate knowledge regarding the student if each of the committees described above is inapplicable. This committee must follow the same procedures required of an ARD or a Section 504 committee.

Student with Physical Limitations

If a student entering grade 9 during the 2007-08 school year or thereafter is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Recommended or Advanced/Distinguished High School Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

Education Code 28.025(b-10)-(b-11); 19 TAC 74.62(b)(7), .63(b)(7), .64(b)(7), .72(b)(6), .73(b)(6), .74(b)(6)

Transfers from Out-of-State or Nonpublic Schools

Out-of-state or out-of-country transfer students (including foreign exchange students) and transfer students from Texas nonpublic schools are eligible to receive Texas diplomas but shall complete all applicable high school graduation requirements. Any course credits required for graduation that are not completed before enrollment may be satisfied through credit by examination, correspondence courses, distance learning, or completing the course, according to the provisions of 19 Administrative Code 74.26. *19 TAC 74.11(g)* [See EHDB, EHDC, EHDE, and EI]

Graduation of Students Receiving Special Education Services

Modified Curriculum and Content

Modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in 19 Administrative Code Chapters 110-117, 126-128, and 130. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content. *19 TAC 89.1070(k)*

Employability and Self-Help Skills

Employability and self-help skills are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment. *19 TAC 89.1070(i)*

Summary of Academic Achievement and Evaluation

A summary of academic achievement and functional performance must be provided prior to exit from public school for students who meet one of the following conditions:

1. A student who has met requirements for graduation specified in 19 Administrative Code 89.1070(b)(1) or who has exceeded the maximum age eligibility as described by 19 Administrative Code 89.1035; or

2. A student who has met requirements for graduation specified in 19 Administrative Code 89.1070(b)(2) or (b)(3)(A), (B), or (C). A student meeting this condition is entitled to an evaluation as described by 34 C.F.R. 300.305(e)(1).

The summary of performance must include recommendations on how to assist the student in meeting the student's postsecondary

goals, as required by 34 C.F.R. 300.305(e)(3). This summary must also consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. Students who meet graduation requirements under 19 Administrative Code 89.1070(b)(2) or (b)(3)(A), (B),or (C) and who will continue enrollment in public school to receive special education services aligned to their transition plan will be provided the summary of performance upon exit from the public school system. These students are entitled to participate in commencement ceremonies and receive a certificate of attendance after completing four years of high school.

19 TAC 89.1070 (f)-(h)

Graduation Criteria

A student who receives special education services may graduate and be awarded a diploma if the student meets one of the following conditions:

1. The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110-117, 126-128, and 130; satisfactorily completed credit requirements for graduation under the foundation high school program applicable to students in general education; and demonstrated satisfactory performance as established in Education Code Chapters 28 and 39, on the required EOC assessment instruments, which could include meeting the requirements of 19 Administrative Code 89.1070(d).

2. The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110-117, 126-128, and 130; the student has satisfactorily completed credit requirements for graduation under the foundation high school program specified in 19 Administrative Code 74.12 applicable to students in general education; and the student's ARD committee has determined that satisfactory performance, beyond what would otherwise by required in 19 Administrative Code 89.1070(b)(1) and (d), on the required EOC assessment instruments is not required for graduation.

3. The student has satisfactorily completed credit requirements for graduation under the foundation high school program, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education; demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110-117, 126-128, and 130 in accordance with modified con-

tent and curriculum expectations established in the student's IEP; and demonstrated satisfactory performance on the required EOC assessment instruments, unless the student's ARD committee has determined that satisfactory performance on the required EOC assessment instruments is not required for graduation. The student must also successfully complete the student's IEP and meet one of the following conditions:

a. Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;

b. Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district; or

c. The student has access to services or other supports that are not within the legal responsibility of public education, including employment or postsecondary education established through transition planning.

When a student receives a diploma under item 2 or 3(a), (b), or (c), above, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

19 TAC 89.1070(b), (j)

Endorsements

A student who is enrolled in a special education program may earn the distinguished level of achievement or an endorsement on the student's transcript under Education Code 28.025(c-1) by:

1. Successfully completing, with or without modification of the curriculum:

   a. The curriculum requirements identified by the SBOE for the foundation high school program;

   b. For the distinguished level of achievement, the additional curriculum requirements prescribed under Education Code 28.025(b-15); and

   c. For an endorsement, the additional curriculum requirements prescribed by the SBOE; and

2. Successfully completing all curriculum requirements for the distinguished level of achievement or that endorsement adopted by the SBOE:

    a. Without modification of the curriculum; or

    b. With modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's ARD committee and documented in the student's IEP.

The ARD committee of a student in a special education program shall determine whether the student is required to achieve satisfactory performance on an end-of-course assessment instrument to earn the distinguished level of achievement or an endorsement on the student's transcript.

Education Code 28.025(c-7)-(c-8), 19 TAC 89.1070(c)

Graduation of Military Dependents

District officials shall waive specific courses required for graduation if similar coursework has been satisfactorily completed by a military student in another district or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the district shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

Course Waiver

Transfers During Senior Year

Should a military student transferring at the beginning or during the student's senior year be ineligible to graduate from the district after all alternatives have been considered, the sending and receiving districts shall ensure the receipt of a diploma from the sending district, if the student meets the graduation requirements of the sending district. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student.

Substitute Passing Standard

The commissioner shall adopt a passing standard on one or more national norm-referenced achievement tests for purposes of permitting a qualified military dependent to meet that standard as a substitute for completing a specific course otherwise required for graduation. The passing standard is available only for a student who enrolls in a public school in this state for the first time after completing the ninth grade or who reenrolls in a public school in this state at or above the 10th-grade level after an absence of at least two years from the public schools of this state. Each passing standard in effect when a student first enrolls in a Texas public high school remains applicable to the student for the duration of

the student's high school enrollment, regardless of any subsequent revision of the standard.

Education Code 162.002 art. VII, A, C [See FDD]

Graduation of Student Who Is Homeless or in Conservatorship of DFPS

If an 11th or 12th grade student who is homeless or in the conservatorship of the Department of Family and Protective Services transfers to a different school district and the student is ineligible to graduate from the district to which the student transfers, the district from which the student transferred shall award a diploma at the student's request, if the student meets the graduation requirements of the district from which the student transferred. *Education Code 28.025(i)*

Local Achievement Testing

In addition to the state-administered assessment instruments, a district may adopt and administer criterion-referenced or norm-referenced assessment instruments, or both, at any grade level. A locally adopted norm-referenced assessment instrument must be economical, nationally recognized, and state-approved.

For purposes of this provision, "assessment instrument" means a district-commissioned achievement test, either nationally normed or criterion-referenced, that is group administered and reported publicly (such as to a board) in the aggregate.

A company or organization scoring an assessment instrument shall send test results to a district for verification. A district shall have 90 days to verify the accuracy of test data and report the results to the board.

A district shall follow procedures for test security and confidentiality set forth in 19 Administrative Code Chapter 101, Subchapter C. [See EKB]

Education Code 39.026, .032; 19 TAC 101.101

Assessment Instrument Limitations

In any subject area for which a state assessment is administered, a district may not administer locally required assessments designed to prepare students for state assessments to any student on more than ten percent of the instructional days in any school year. A campus-level planning and decision-making committee may limit the administration of locally required assessments to ten percent or a lower percentage of the instructional days in any school year. This prohibition does not apply to the administration of college preparation assessments, advanced placement tests, international baccalaureate examinations, or state assessments. *Education Code 39.0262*

Benchmark Assessment Instruments

"Benchmark assessment instrument" means a district-required assessment instrument designed to prepare students for a corresponding state-administered assessment instrument.

A district may not administer to any student more than two benchmark assessment instruments to prepare the student for a corresponding state-administered assessment instrument.

This prohibition does not apply to the administration of a college preparation assessment instrument, including the PSAT, the PreACT, the SAT, or the ACT, an advanced placement test, an international baccalaureate examination, or an independent classroom examination designed or adopted and administered by a classroom teacher.

A parent of or person standing in parental relation to a student who has special needs, as determined in accordance with commissioner of education rule, may request administration to the student of additional benchmark assessment instruments.

Education Code 39.0263

Designed to Prepare

For purposes of Education Code 39.0262 and 39.0263, an assessment instrument designed to prepare students for state-administered assessment instruments is an assessment that:

1. Evaluates students' potential performance relative to the state's blueprint in whole for a state-administered assessment; or

2. Is primarily focused on test-taking techniques.

This provision does not include an assessment designed to evaluate students' mastery of parts of the Texas Essential Knowledge and Skills or the efficacy of instructional practice.

19 TAC 101.6003

College Preparation Assessments

Each school year, and at state cost, a district may administer an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument:

1. To students in the spring of the eighth grade, for the purpose of diagnosing the academic strengths and deficiencies of students before entrance into high school; and

2. To students in the tenth grade, for the purpose of measuring a student's progress toward readiness for college and the workplace.

The provisions of Education Code 39.0261(a)(1) and (a)(2), above, apply only if the legislature appropriates funds for those purposes.

Education Code 39.0261(a)(1)–(a)(2), (f)

High school students, in the spring of the eleventh grade or during the twelfth grade, may select and take once, at state cost:

1. One of the valid, reliable, and nationally norm-referenced assessment instruments used by colleges and universities as part of their undergraduate admissions processes;

2. The assessment instrument designated by the Texas Higher Education Coordinating Board under Education Code 51.334; or

3. A nationally recognized career readiness assessment instrument that measures foundational workforce skills approved by commissioner rule.

A high school student is not prohibited from taking the test more than once, at the student's own expense.

Education Code 39.0261(a)(3), (e)

A district is entitled to reimbursement for the amount of fees paid by the district for the administration of an assessment instrument under Education Code 39.0261(a)(3), above. *Education Code 48.155*

Homeschooled Students

The following provisions apply to a homeschooled student entitled under Education Code 25.001 to attend school in a district.

A district shall permit a homeschooled student to participate in an administration of the PSAT/NMSQT or a college advanced placement test offered by the district.

"Homeschooled student" means a student who predominantly receives instruction in a general elementary or secondary education program that is provided by the parent, or a person standing in parental authority, in or through the child's home.

Fees

A district shall require a homeschooled student to pay the same fee to participate in such a test that a student enrolled in the district is required to pay.

Notice

A district shall post on an internet website maintained by the district the date the PSAT/NMSQT will be administered and the date any college advanced placement tests will be administered. The notice must state that the PSAT/NMSQT or the advanced placement test is available for homeschooled students eligible to attend school in the district and describe the procedures for a homeschooled student to register for the test.

A district that does not maintain an internet website must publish the notice in a newspaper in the district. If a newspaper is not published in the district, the district shall provide for the publication of notice in at least one newspaper in the county in which the district's central administrative office is located.

The required notice must be posted or published at the same time and with the same frequency with which the information is provided to a student who attends a district school.

Education Code 29.916

Armed Services Vocational Aptitude Battery Test

Each school year each school district shall provide students in grades 10 through 12 an opportunity to take the Armed Services Vocational Aptitude Battery (ASVAB) test and consult with a military recruiter.

The test must be scheduled:

1. During normal school hours; and
2. To optimize student participation, at a time that limits conflicts with extracurricular activities.

Each school district shall provide each student in grades 10 through 12 and the student's parent or person standing in parental relation to the student a notice of the date, time, and location of the scheduled administration of the ASVAB test.

A school district may elect not to provide the ASVAB test only if the district or school provides an alternative test that:

1. Assesses a student's aptitude for success in a career field other than a career field that requires postsecondary education;
2. Is free to administer;
3. Requires minimal training and support of district or school faculty and staff to administer the test; and
4. Provides the student with a professional interpretation of the test results that allows the student to:
    a. Explore occupations that are consistent with the student's interests and skills; and
    b. Develop strategies to attain the student's career goals.

A school district or high school that, before September 1, 2017, entered into a contract under which a vocational aptitude test that does not comply with the requirements for an alternative test is provided to students in grades 10 through 12, may elect not to provide the ASVAB test for the term of the contract. On the expiration of the contract term, this exemption is not applicable.

Education Code 29.9015

Table of Contents

State Assessment of Academic Skills....3
Emergent Bilingual Students....3
Special Education....3
Military Dependents....3
Administration....4
Schedule....4
Test Administration Training....5
Paper Administration....6
Notice to Parents and Students....6
Testing in Grades 3-8....7
Exception....7
Kindergarten Assessment....8
Accommodations....8
End-of-Course Assessments....8
Students Enrolled Below High School Level....9
Assessment Requirements for Graduation....9
Substitute Assessments....10
Accountability Testing....10
Individual Graduation Committee....11
Special Education....11
Credit by Examination....12
Retakes....12
Reporting Results....12
To the Public....12
To the Board....13
To Parents, Students, and Teachers....13
Parents Right-to-Know Under ESEA....13
Parental Access....13
Out-of-State Transfers....13
Security and Confidentiality....14
Violations....15
Consequences....16
Test Administration Procedures....16
Records Retention....16

Disciplinary Action and Penalties.....16
Minimize Disruptions 17
Confidentiality of Results 17

State Assessment of Academic Skills

Every student receiving instruction in the essential knowledge and skills shall take the appropriate criterion-referenced assessments, as required by Education Code Chapter 39, Subchapter B [see Testing in Grades 3-8, below]. *Education Code 39.023(a), (c), (f); 19 TAC 101.5*

A student may not receive a high school diploma until the student has performed satisfactorily on end-of-course (EOC) assessment instruments [see End-of-Course Assessments, below]. *Education Code 39.025(a); 19 TAC 101.4001*

Emergent Bilingual Students

In grades 3-12, an emergent bilingual student, as defined by Education Code Chapter 29, Subchapter B, shall participate in the state assessment in accordance with commissioner rules at 19 Administrative Code Chapter 101, Subchapter AA. *Education Code 39.023(l), (m)* [See EKBA]

Special Education

The Texas Education Agency (TEA) shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to each student in a special education program for whom a state assessment instrument adopted under Education Code 39.023(a), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal (ARD) committee, including assessment instruments approved by the commissioner of education that measure growth. The assessment instruments developed or adopted, including the assessment instruments approved by the commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students.

TEA may not adopt a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's ARD committee.

The student's ARD committee shall determine whether any allowable modification is necessary in administering to the student a required EOC assessment instrument under Education Code 39.023(c), and whether the student is required to achieve satisfactory performance on an EOC assessment instrument to receive a high school diploma.

Education Code 39.023(b)-(c), .025(a-4)

Military Dependents

If the student is a military dependent, the district shall incorporate procedures to accept:

1. Exit or EOC exams required for graduation from the sending state;

2. National norm-referenced achievement tests; or

3. Alternative testing, in lieu of testing requirements for graduation in the receiving state.

In the event the above alternatives cannot be accommodated by the receiving state for a military dependent transferring in his or her senior year, then Education Code 162.002 article VII, section C, shall apply.

Education Code 162.002 art. VII [See EIF]

Administration

A district shall follow the test administration procedures established by TEA in the applicable test administration materials. A superintendent shall be responsible for administering tests. *19 TAC 101.25, .27*

Schedule

The commissioner shall specify the schedule for testing that is in compliance with Education Code 39.023(c-3) and supports reliable and valid assessments. Participation in University Interscholastic League (UIL) area, regional, or state competitions is prohibited on any days on which testing is scheduled between Monday and Thursday of the school week in which the primary administration of assessment instruments occurs.

The commissioner may provide alternate dates for the administration of tests required for a high school diploma to students who are migratory children and who are out of the state.

19 TAC 101.25

On request by a district, the commissioner may allow the district to administer an assessment instrument on the first instructional day of a week if administering the assessment instrument on another instructional day would result in a significant administrative burden due to specific local conditions. *Education Code 39.023(c-3)*

Religious Holy Days

The board may consider the dates of religious holy days or periods of observance likely to be observed by the students enrolled in the district during the period set by the State Board of Education (SBOE) for the administration of state assessment instruments in establishing:

1. The district's calendar for that school year; and

2. The instructional days within that period on which students are administered the required assessment instruments, provided that the board not exclude more than two instructional

days from that period based solely on the occurrence of a single religious holy day or period of observance.

"Religious holy day or period of observance" means a holy day or a period of holy days observed by a religion whose places of worship would be exempt from property taxation under Tax Code 11.20.

In establishing a school calendar under this provision, the board shall provide for alternative dates for the administration of state assessment instruments to a student who is absent from school to observe a religious holy day or period of observance on the date an assessment instrument is administered.

Education Code 39.0238

Alternate Test Dates

The commissioner shall consider requests from districts or campuses for alternate test dates on a case-by-case basis. Alternate test dates will only be allowed if the campus or district is closed on the day on which testing is scheduled or if there is an exceptional circumstance, defined below, that may affect a district's or campus's ability to administer an assessment or the students' performance on the assessment.

"Exceptional circumstances" include:

1. Inclement weather or natural disasters that would cause a district or campus to be closed or that would cause a small percentage of students to be in attendance on the day testing is scheduled;
2. Health epidemics that result in a large number of students being absent on the day of testing;
3. Death of a student or school official that may impact student performance; and
4. Sudden emergencies that occur on the day of testing or shortly before testing that may inhibit students from completing the assessments, such as a fire on campus, a bomb threat, an extended power outage, or a water main break.

If an alternate test date for primary test administration is approved, the commissioner may prohibit a district or campus from participating in UIL competition on the new test date if that is determined to be in the best interest of the district, campus, and students.

19 TAC 101.5003

Test Administration Training

The commissioner may require training for district employees involved in the administration of the assessment instruments. The commissioner may only require for the employee at each district

campus who oversees the administration of the assessment instruments to annually receive the training. The district employee who oversees test administration on a district campus may, with discretion, require other district employees involved in the administration of assessment instruments to repeat the training. *Education Code 39.0304(a), (b-1)-(b-2)*

Paper Administration

A district may administer a state assessment instrument required under Education Code 39.023(a), (c), or (l) in paper format to any student whose parent, guardian, or teacher in the applicable subject area requests the assessment instrument be administered to the student in paper format.

A request for the administration of an assessment instrument in paper format to a student must be submitted to the district:

1. For a fall administration of an assessment instrument, not later than September 15 of the school year in which the assessment instrument will be administered; and

2. For a spring administration of an assessment instrument, not later than December 1 of the school year in which the assessment instrument will be administered.

The number of students enrolled at a district who are administered an assessment instrument in paper format for any single administration under this provision may not exceed three percent of the number of students enrolled in the district. On receipt of more requests for administration of an assessment instrument than the maximum number permitted, the district shall accept the requests in the order received until the maximum number is reached.

This limitation does not apply to a student whose ARD committee determines that the administration of an assessment instrument in paper format is a necessary modification for the student.

Education Code 39.02342

Notice to Parents and Students

A superintendent shall be responsible for the following in order to provide timely and full notification of graduation requirements:

1. Notifying each student and his or her parent or guardian in writing no later than the beginning of the student's seventh-grade year of the testing requirements for graduation;

2. Notifying each student in grades 7-12 new to the district and his or her parent or guardian in writing of the testing requirements for graduation; and

3. Notifying each student who shall take the tests required for graduation and his or her parent or guardian, as well as out-

of-school individuals, of the dates, times, and locations of testing.

19 TAC 101.3012

Testing in Grades 3-8

Except as provided below, all students, other than students who are assessed under Education Code 39.023(b) (alternative assessment instrument) or 39.023(l) (emergent bilingual students) or exempted under Education Code 39.027, shall be assessed in:

1. Mathematics, annually in grades 3-8;
2. Reading, annually in grades 3-8;
3. Social studies in grade 8;
4. Science in grades 5 and 8; and
5. Any other subject and grade required by federal law.

Education Code 39.023(a)

Exception

For purposes of federal accountability, a student shall not be administered a grade-level assessment if the student:

1. Is enrolled in a course or subject intended for students above the student's enrolled grade level and will be administered a grade-level assessment instrument developed under the list above that aligns with the curriculum for that course or subject within the same content area; or
2. Is enrolled in a course for high school credit in a subject intended for students above the student's enrolled grade level and will be administered an EOC assessment instrument that aligns with the curriculum for that course or subject within the same content area.

For purposes of federal accountability, a grade 3-8 student who is accelerated in mathematics, reading/language arts, or science and on schedule to complete the high school end-of-course assessments in that same content area prior to high school shall be assessed at least once in high school with the ACT or the SAT.

A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is on schedule to complete instruction in the entire curriculum for that subject during the semester the assessment is administered.

A student in grade 5 or 8 described above may not be denied promotion on the basis of failure to perform satisfactorily on an as-

sessment instrument not required to be administered to the student.

Education Code 28.0211(o)-(p), 39.023(a-2); 19 TAC 101.3011(a)(1)-(3)

Kindergarten Assessment

An assessment instrument under Education Code 39.023 may not be administered to a kindergarten student except for the purpose of determining whether the student is entitled to the benefit of the Foundation School Program [see FD]. *Education Code 39.023(a-16)*

Accommodations

Testing accommodations are permitted for any student unless they would make a particular test invalid. Decisions regarding testing accommodations shall take into consideration the needs of the student and the accommodations the student routinely receives in classroom instruction. Permissible testing accommodations shall be described in the appropriate test administration materials.

The committee established by a board to determine the placement of students with dyslexia or related disorders shall determine whether any allowable modification is necessary in administering an assessment to such a student.

A student's ARD committee shall determine the allowable accommodations and shall document them in the student's individualized education program (IEP). [See Special Education, above]

19 TAC 101.3013; Education Code 39.023(a)-(c), (n); 34 C.F.R. 300.320(a)(6)

End-of-Course Assessments

Beginning with students first enrolled in grade 9 in the 2011-12 school year, a student enrolled in a course for which an EOC assessment exists as required by Education 39.023(c) shall take the appropriate assessment. *19 TAC 101.3021(a)*

TEA shall adopt EOC assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history. The Algebra I EOC assessment instrument must be administered with the aid of technology but may include one or more parts that prohibit the use of technology. The English I and English II EOC assessment instruments must each assess essential knowledge and skills in both reading and writing and must provide a single score. A district shall comply with SBOE rules regarding administration of the assessment instruments listed in this provision.

If a student is in a special education program, the student's ARD committee shall determine whether any allowable modification is

necessary in administering to the student an assessment instrument required under this provision.

Education Code 39.023(c)

Students Enrolled Below High School Level

Beginning in the 2011-12 school year, a student in grade 8 or lower who takes a high school course for credit is required to take the applicable EOC assessment. The EOC assessment result shall be applied toward the student's assessment graduation requirements, as specified in 19 Administrative Code 101.3022. *19 TAC 101.3021(d)*

Assessment Requirements for Graduation

A student must meet satisfactory performance on an EOC assessment listed in Education Code 39.023(c) in order to be eligible to receive a Texas diploma, except as described below at Exceptions, Credits Earned Prior to Enrollment, Individual Graduation Committee, and Special Education.

The standard in place when a student first takes an EOC assessment is the standard that will be maintained throughout the student's school career.

Exceptions

English I or English II

A student who was administered separate reading and writing EOC assessments under Education Code 39.023(c), for the English I or English II course has met that course's assessment graduation requirement if the student has:

1. Achieved satisfactory performance on either the reading or writing EOC assessment for that course;
2. Met at least the minimum score on the other EOC assessment for that course; and
3. Achieved an overall scale score of 3750 or greater when the scale scores for reading and writing are combined for that course.

Exceptions related to English I also apply to emergent bilingual students who meet the criteria in 19 Administrative Code 101.1007. [See EKBA]

19 TAC 101.3022(a)-(c)

Credits Earned Prior to Enrollment

If a student earned high school credit for a course with an EOC assessment prior to enrollment in a Texas public school district and the credit has been accepted by a Texas public school district, or a student completed a course for Texas high school credit in a course with an EOC assessment prior to the 2011-12 spring administration, the student is not required to take the corresponding EOC assessment. *19 TAC 101.3021(e)*

Substitute Assessments

A student at any grade level is eligible to use a substitute assessment as provided in the commissioner's chart at 19 Administrative Code 101.4002(b) if the student:

1. Was administered an approved substitute assessment for an equivalent course in which the student was enrolled;
2. Received a satisfactory score on the substitute assessment as determined by the commissioner and provided in the chart at 19 Administrative Code 101.4002(b); and
3. Using a Texas Success Initiative Assessment (TSIA) or a Texas Success Initiative Assessment, Version 2.0 (TSIA2) also meets the additional criteria of 19 Administrative Code 101.4002(d).

TSI Additional Criteria

A student must meet the criteria established in 19 Administrative Code 101.4002(d) in order to qualify to use TSIA or TSIA2 as a substitute assessment.

Accountability Testing

A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under Education Code 39.023(c) at least once for accountability purposes. If a student sits for an EOC assessment, a district may not void or invalidate the test in lieu of a substitute assessment.

A student who fails to perform satisfactorily on a PSAT or PreACT test as indicated in the chart in 19 Administrative Code 101.4002(b) must take the appropriate EOC assessment required under Education Code 39.023(c). However, a student who does not receive a passing score on the EOC assessment and retakes a PSAT or PreACT test is eligible to meet the requirements specified in 19 Administrative Code 101.4002(c).

19 TAC 101.4002

Verification of Results

An eligible student is responsible for providing a district an official copy of the student's scores from the substitute assessment.

Upon receipt of official results of an approved substitute assessment, a district must:

1. Verify the student's score on the substitute assessment; and
2. Determine whether the student met the performance standard required to qualify for a public high school diploma in Texas as established by the commissioner.

19 TAC 101.4005

Individual Graduation Committee

A student in grade 11 or 12 who has failed to comply with the EOC assessment instrument performance requirements under Education Code 39.025 for not more than two courses may qualify to graduate on the basis of a review by an individual graduation committee (IGC). [See EIF] *Education Code 28.0258, 39.025(a-5)*

A student may not graduate under an IGC if the student did not take each required EOC assessment or an approved substitute assessment for each course in which the student was enrolled in a Texas public school for which there is an EOC assessment. A district shall determine whether the student took each required EOC assessment or an approved substitute assessment. For purposes of this provision only, a student who does not make an attempt to take all required EOC assessments may not qualify to graduate by means of an individual graduation committee.

Notwithstanding any action taken by a student's individual graduation committee, a district must provide a student an opportunity to retake an EOC assessment under Education Code 39.023(c) if the student has not previously achieved satisfactory performance on an assessment for that course. A student is not required to retake a course in order to be administered a retest of an EOC assessment.

19 TAC 101.3022(e)(1), (3)

For provisions related to an IGC and emergent bilingual students, see EKBA.

Special Education

A student receiving special education services is not subject to the IGC requirements in Education Code 28.0258. As provided in 19 Administrative Code 89.1070 (Graduation Requirements) and 19 Administrative Code 101.3023 (Participation and Graduation Assessment Requirements for Students Receiving Special Education Services), a student’s ARD committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate. [See EIF]

A student dismissed from a special education program who achieved satisfactory performance on an alternate EOC assessment while enrolled in a special education program is not required to take and achieve satisfactory performance on the general EOC assessment to graduate. A student who took an EOC assessment while enrolled in a special education program is not required to retake and achieve satisfactory performance on the EOC assessment if the student's ARD committee determined that the student was not required to achieve satisfactory performance on the EOC assessment to graduate. A student dismissed from a special education program must achieve satisfactory performance on any re-

maining EOC assessments that the student is required to take. If the student fails to achieve satisfactory performance on no more than two of the remaining EOC assessments, the student is eligible for IGC review under Education Code 28.0258 and is subject to the IGC provisions above. [See Individual Graduation Committee, above]

19 TAC 101.3022(f)

For more information on graduation requirements for special education students, see EIF.

Credit by Examination

An EOC assessment administered under Education Code 39.023(c) cannot be used for purposes of credit by examination under 19 Administrative Code 74.24. [See EHDB, EHDC] *19 TAC 101.3021(c)*

Retakes

Each time an EOC assessment instrument is administered, a student who failed to achieve a score requirement may retake the assessment instrument. [See Satisfactory Performance, above]

A student is not required to retake a course as a condition of retaking an EOC assessment instrument.

If a student failed a course but achieved satisfactory performance on the applicable EOC assessment, that student is not required to retake the assessment if the student is required to retake the course.

Education Code 39.025(b); 19 TAC 101.3021(f), .3022(d)

Note: For information on instructional requirements for students who fail to perform satisfactorily on a state assessment instrument, see EHBC and EHBCA.

Reporting Results

To the Public

Overall student performance data, aggregated by ethnicity, sex, grade level, subject area, campus, and district, shall be made available to the public, with appropriate interpretations, at regularly scheduled meetings of a board, after receipt from TEA. The information shall not contain the names of individual students or teachers. *Education Code 39.030(b)*

To the Board

A superintendent shall accurately report all test results with appropriate interpretations to a board according to the schedule in the applicable test administration materials.

To Parents, Students, and Teachers

A district shall notify each of its students, his or her parent or guardian, and his or her teacher for that subject of test results, observing confidentiality requirements stated at Confidentiality of Results, below. All test results shall be included in each student's aca-

demic achievement record and shall be furnished for each student transferring to another district or charter school or private school. The scoring contractor will provide districts with the results of the machine-scorable assessments within a 21-day period following the close of the testing window. Upon receipt of the assessment results from the test contractor, a district shall disclose a student's assessment results to a student's teacher in the same subject area as the assessment for that school year. [See BQ series, FD, and FL]

19 TAC 101.3014(a)-(d)

TEA shall adopt a series of questions to be included in an EOC assessment instrument administered under Education Code 39.023(c) to be used for purposes of identifying students who are likely to succeed in an advanced high school course. A district shall notify a student who performs at a high level on the questions and the student's parent or guardian of the student's performance and potential to succeed in an advanced high school course. A district may not require a student to perform at a particular level on the questions to be eligible to enroll in an advanced high school course. *Education Code 39.0233(b)*

Parents Right-to-Know Under ESEA

As a condition of receiving assistance under Title I, Part A of the Elementary and Secondary Education Act (ESEA) (20 U.S.C. 6301 et seq.), a district shall provide to each individual parent of a child who is a student in such school, with respect to such student information on the level of achievement and academic growth of the student, if applicable and available, on each of the state academic assessments required under Part A. *20 U.S.C. 6312(e)(1)(B)(i)*

Parental Access

A parent is entitled to access to a copy of each state assessment instrument administered to the parent's child. This right of access does not apply, however, to those instruments or particular questions that are being field-tested by TEA. *Education Code 26.005, .006(a)(2), 39.023(e)*

Out-of-State Transfers

A district shall accurately report to TEA whether that student transferred into the district from out of state during the current school year.

Procedures for the reporting of out-of-state-transfer students to TEA shall be established in the applicable test administration materials. A district shall follow procedures specified in those test administration materials.

The assessment results of the out-of-state transfer students shall be reported separately to districts from the results of the district's

other students in addition to the current reporting of assessment results for all students and other student subsets.

19 TAC 101.3014(e)

Security and Confidentiality

All assessment instruments included in the student assessment program are considered secure, and the contents of these tests, including student information used or obtained in their administration, are confidential.

Districts and campuses and the superintendent and campus principals in each district and campus shall:

1. Implement and ensure compliance with state test administration procedures and training activities;
2. Notify TEA as soon as the district becomes aware of any alleged or suspected violation of the security or confidential integrity of a test [see Violations, below];
3. Report all confirmed testing violations to TEA within 10 working days of the district becoming aware of the violation in accordance with the reporting process stipulated in the test administration materials;
4. Ensure that the only individuals with access to secure test materials are district employees who have:
    a. Met the requirements to participate in the student assessment program;
    b. Received training in test security and test administration procedures; and
    c. Signed an oath affirming they understand their obligation to maintain and preserve the security and confidentiality of all state assessments and student information, acknowledge their responsibility to report any suspected testing violation, and are aware of the range of penalties that may result from a violation of test security and confidentiality or a departure from test administration procedures; and
5. Ensure the security of the test materials as required by 19 Administrative Code 101.3031(a)(2)(E).

19 TAC 101.3031(a)(1)-(2)

Violations

Violations of the security and confidential integrity of a test include:

1. Directly or indirectly assisting students with responses to test questions;

2. Tampering with student responses;

3. Falsifying holistic ratings or student responses;

4. Viewing secure test content before, during, or after an administration unless specifically authorized by TEA or by the procedures outlined in the test administration materials;

5. Discussing or disclosing secure test content or student responses;

6. Scoring students' tests, either formally or informally;

7. Duplicating, recording, or electronically capturing confidential test content unless specifically authorized by TEA or by the procedures outlined in the test administration materials;

8. Responding to secure test questions;

9. Fraudulently exempting or preventing a student from participating in the administration of a required state assessment;

10. Receiving or providing unallowable assistance during calibration activities (e.g., taking notes, providing answer sheets, or sharing answers);

11. Encouraging or assisting an individual to engage in the conduct described above or in any other serious violation of security and confidentiality;

12. Failing to report to an appropriate authority that an individual has engaged or is suspected of engaging in the above conduct or in any other serious violation of security and confidentiality under this provision;

13. Failing to implement sufficient procedures to prevent student cheating; and

14. Failing to implement sufficient procedures to prevent alteration of test documents by anyone other than the student.

Consequences

If a district determines that a student has cheated or attempted to cheat on a state assessment either by providing or receiving direct assistance, the district shall invalidate the student's test results.

Any violation of test security or confidential integrity may result in TEA:

1. Invalidating student test results;

2. Referring certified educators to the State Board for Educator Certification (SBEC) for sanctions in accordance with 19 Administrative Code Chapter 247 (Educators' Code of Ethics)

and Chapter 249 (Disciplinary Proceedings, Sanctions, and Contested Cases); and

3. Lowering the district's accreditation status or a district's or campus's accountability rating in accordance with Education Code 39.003(d), or appointment of a monitor, conservator, or management team to the district in accordance with Education Code Chapter 39A.

Test Administration Procedures

Test administration procedures shall be delineated in the test administration materials provided to districts annually. Districts must comply with all of the applicable requirements specified in the test administration materials.

Districts shall ensure that test coordinators and administrators receive training to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner.

Records Retention

As part of test administration procedures, the commissioner shall require districts to maintain records related to the security of assessment instruments for five years.

19 TAC 101.3031(a)(3)-(d)

Disciplinary Action and Penalties

SBEC may take disciplinary action against a person who has violated the security or integrity of any assessment required by Education Code Chapter 39, Subchapter B or has committed an act that is a departure from the test administration procedures established by the commissioner under 19 Administrative Code Chapter 101.

The superintendent and campus principal must develop procedures to ensure the security and confidentiality of the tests and will be responsible for notifying TEA in writing of conduct that violates the security or confidentiality of a test. Failure to report can subject the person responsible to the applicable penalties.

19 TAC 249.15(a)-(b), (g)(8)

Minimize Disruptions

In implementing the commissioner's procedures for the administration of assessment instruments adopted or developed under Education Code 39.023, including procedures designed to ensure the security of the assessment, a district shall minimize disruptions to school operations and the classroom environment. *Education Code 39.0301(a-1)*

Confidentiality of Results

Individual student performance results are confidential and may be released only in accordance with the Family Educational Rights and Privacy Act of 1974. *Education Code 39.030(b)* [See FL and GBA]

Kindergarten Reading Readiness

The commissioner of education shall adopt a reading instrument that a school district shall use at the beginning of the school year to measure a kindergarten student's foundational literacy skills in reading development and comprehension. A reading instrument adopted under this section may include other developmental skills as part of a multidimensional assessment tool. *Education Code 28.006(b)*

The commissioner may approve not more than two alternative reading instruments for use in measuring the foundational literacy skills in reading development and comprehension of kindergarten students. *Education Code 28.006(b-1)*

Not later than the 60th day after the beginning of the school year, each district shall administer at the kindergarten level a reading instrument adopted by the commissioner or an alternative reading instrument approved by the commissioner. The district shall administer the reading instrument in accordance with the commissioner's recommendations and policies developed by commissioner rule.

The commissioner by rule shall determine the performance on the reading instrument that indicates kindergarten readiness. Each reading instrument must provide for the ability to compare the performance that indicates kindergarten readiness on that instrument with the performance that indicates kindergarten readiness on other instruments adopted or approved by the commissioner.

Education Code 28.006(c-2)–(c-3)

Reports

A superintendent shall:

1. Report to the commissioner and the board at a public meeting the results of a reading instrument;
2. Not later than the earlier of the 20th school day or the 30th calendar day after the date on which the results of a reading instrument are available, report, in writing or electronically, to a student's parent or guardian the student's results on the reading instrument; and
3. Using the school readiness certification system, report each student's raw score on the reading instrument to the Texas Education Agency (TEA) using the school readiness certification system.

Education Code 28.006(d)

Report to Parents

A district shall make a good faith effort to ensure that the report to the parent is provided either in person or electronically and that the report is clear and easy to understand and is written in English and

in the parent or guardian's native language. *Education Code 28.006(h)*

Cost

TEA shall ensure reading instruments are available to districts at no cost. *Education Code 28.006(f)*

Early Literacy Instruments

The commissioner shall adopt a list of reading instruments approved for use by districts in kindergarten through grade three to measure students' foundational literacy skills in reading development and comprehension. *Education Code 28.0063(a)*

Requirements

A reading instrument must:

1. Be based on scientific research concerning foundational literacy skills in reading development and comprehension;
2. Be capable of being administered at the beginning, middle, and end of the school year;
3. Be designed to assess the performance of students in the foundational literacy skills components of the TEKS for language arts;
4. Be capable of monitoring student progress in a manner that allows district staff to identify specific foundational literacy skills in need of targeted instruction;
5. Assess whether a student's skills identified as in need of targeted instruction indicate that the student is at risk of not achieving satisfactory performance on the third grade reading assessment administered under Education Code 39.023;
6. For a reading instrument for students in kindergarten and first grade, include the applicable criteria to serve as the required screenings for dyslexia and related disorders under Education Code 38.003; and
7. Allow a district to generate a report regarding a student's reading progress, including progress from previous administrations of the same instrument, that is clear and easy to understand that may be distributed by the student's parent in English, Spanish, or, to the extent practicable, any other language spoken by the parent.

Education Code 28.0063(b)

Administration of Instrument

A district shall administer to students in kindergarten through third grade a reading instrument adopted under Education Code 28.0063(a) in accordance with requirements and recommendations established by the commissioner, including requirements and recommendations related to administering the instruments, training

staff on the instruments, and applying the results of the instruments to the district's instructional program. *Education Code 28.0063(g)*

Timing of Administration

Reading instruments to measure foundational literacy skills shall be administered:

1. For kindergarten, at the middle and end of the school year;
2. For first and second grade, at the beginning, middle, and end of the school year; and
3. For third grade, at the beginning and middle of the school year.

Education Code 28.0063(d)

Parental Opt-Out

A student's parent or guardian may submit a written request to the administrator of the student's campus to opt the student out of the administration of a reading instrument required under this policy. A district may not encourage or direct a parent or guardian to submit a written request. *Education Code 28.0063(j)*

Reports

A superintendent shall:

1. Report to the commissioner and the board at a public meeting the results of a reading instrument; and
2. Not later than the earlier of the 20th school day or the 30th calendar day after the date on which the results of a reading instrument are available, report, in writing or electronically, to a student's parent or guardian the student's results on the reading instrument, the student's reading progress, and if the student is determined to be at risk for dyslexia or a related disorder based on the results of the reading instrument, information regarding that determination.

Education Code 28.0063(h)

Purchasing Instrument

TEA shall establish a list of reading instruments for which TEA has negotiated a price. A district is not required to use a method provided by Education Code 44.031 [see CH(LEGAL)] to purchase an instrument on the list established by TEA. *Education Code 28.0063(i)*

Complying With Requirement

A district may comply with the requirements of Education Code 28.0063(g) [see Administration of Instrument, above] by administering a reading instrument selected by the board that meets the requirements of Education Code 28.0063 [see Requirements, above] until the commissioner adopts the list of reading instruments under Education Code 28.0063(a). *Education Code 28.0063(m)*

Mathematics Instruments

The commissioner shall adopt a list of mathematics instruments for use by districts in kindergarten through grade three to measure students' foundational numeracy skills in mathematics. *Education Code 28.0063(a)*

Requirements

A mathematics instrument must:

1. Be based on scientific research concerning foundational numeracy skills in mathematics;
2. Be capable of being administered at the beginning, middle, and end of the school year;
3. Be designed to assess the performance of students in the foundational numeracy skills components of the TEKS for mathematics;
4. Be capable of monitoring student progress in a manner that allows district staff to identify specific foundational numeracy skills in need of targeted instruction; and
5. Assess whether a student's skills identified as in need of targeted instruction indicate that the student is at risk of not achieving satisfactory performance on the third grade mathematics assessment administered under Education Code 39.023.

Education Code 28.0063(b)

Administration of Instrument

A district shall administer to students in kindergarten through third grade a mathematics instrument adopted under Education Code 28.0063(a) in accordance with requirements and recommendations established by the commissioner, including requirements and recommendations related to administering the instruments, training staff on the instruments, and applying the results of the instruments to the district's instructional program. *Education Code 28.0063(g)*

Timing of Administration

Mathematics instruments to measure foundational numeracy skills shall be administered:

1. For kindergarten, at the middle and end of the school year;
2. For first and second grade, at the beginning, middle, and end of the school year; and
3. For third grade, at the beginning and middle of the school year.

Education Code 28.0063(d)

Parental Opt-Out

A student's parent or guardian may submit a written request to the administrator of the student's campus to opt the student out of the

administration of a mathematics instrument required under this policy. A district may not encourage or direct a parent or guardian to submit a written request. *Education Code 28.0063(j)*

Reports

A superintendent shall:

1. Report to the commissioner and the board at a public meeting the results of a mathematics instrument; and

2. Not later than the earlier of the 20th school day or the 30th calendar day after the date on which the results of a mathematics instrument are available, report, in writing or electronically, to a student's parent or guardian the student's results on the instrument.

Education Code 28.0063(h)

Purchasing Instrument

The Texas Education Agency (TEA) shall establish a list of mathematics instruments for which TEA has negotiated a price. A district is not required to use a method provided by Education Code 44.031 [see CH(LEGAL)] to purchase an instrument on the list established by TEA. *Education Code 28.0063(i)*

Complying With Requirement

A district may comply with the requirements of Education Code 28.0063(g) [see Administration of Instrument, above] by administering a mathematics instrument selected by the board that meets the requirements of Education Code 28.0063 [see Requirements, above] until the commissioner adopts the list of mathematics instruments under Education Code 28.0063(a). *Education Code 28.0063(m)*

Definition

For the purpose of this policy, “parent” is the person who is indicated on the student registration form at the campus. The signature of only one parent of a student is required for a charter created by petition or a cooperative program charter. *Education Code 12.051(1), .052(b), .053(b)*

Policy

A district shall adopt a campus charter and program charter policy, which shall specify the:

1. Process for approval of a campus charter or program charter;
2. Statutory requirements with which a campus charter or program charter must comply; and
3. Items that must be included in a charter application.

Education Code 12.058

Campus or Program Charter

A board may grant a charter to parents and teachers for a campus or a program on a campus.

A board shall grant or deny the charter, through a public vote, if the board is presented with a petition signed by:

1. The parents of a majority of the students at that campus; and
2. A majority of the classroom teachers at that campus.

A board may not arbitrarily deny a charter.

Education Code 12.052

New Campus or Contract Charter

A board may grant a charter for:

1. A new district campus; or
2. A program that is operated:
    a. By an entity that has entered into a contract with the district under Education Code 11.157 [see EEL] to provide educational services to the district through the campus or program; and
    b. At a facility located in the boundaries of the district.

Voluntary Enrollment

A student’s parent or guardian may choose to enroll the student at a campus or in a program charter. A district may not assign a student to the campus or program unless the student’s parent or guardian has voluntarily enrolled the student.

Parental Removal

A student’s parent or guardian may, at any time, remove the student from the campus or program and enroll the student at the campus to which the student would ordinarily be assigned.

Teacher Assignment	A district may not assign to the campus or program a teacher who has signed a written statement that the teacher does not agree to that assignment. *Education Code 12.0521*
Contract Charter Funding	Beginning with the 2019–20 school year, a district is eligible to receive funding under Education Code 48.252 on the renewal of a contract. A district under contract with an open-enrollment charter school to jointly operate a campus or campus program during the 2017–18 school year and under any renewal of that contract during the 2018–19 school year is eligible to receive funding under former Education Code 42.2511 for each student or the portion of each student's school day under the direction of the open-enrollment charter school. *Education Code 11.157(b); 19 TAC 61.1010*
District Charter	A board may grant a district charter to a campus.
Enrollment Limit	A district charter may be granted only to one or more campuses serving in total a percentage of the district's student enrollment equal to not more than 15 percent of the district's student enrollment for the preceding school year.
Exception	The percentage limit may not prevent a district from granting a district charter to at least one feeder pattern of schools, including an elementary, middle or junior high, and high school. A district charter may be granted to any campus that has received the lowest performance rating under Subchapter C, Chapter 39, Education Code.
Open-Enrollment Charter School	Subchapter D, Chapter 39, Education Code (open-enrollment charter schools) applies to a campus granted a district charter as though the campus were granted a charter under that subchapter, and the campus is considered an open-enrollment charter school. A district charter is not considered for purposes of the limit on the number of charters for open-enrollment charter schools imposed by Education Code 12.101. *Education Code 12.0522*
Cooperative Campus Charter	A board may grant a charter to parents and teachers at two or more campuses in the district for a cooperative charter program if the board is presented with a petition signed by: 1. The parents of a majority of the students at each school; and 2. A majority of the classroom teachers at each school. *Education Code 12.053*

Performance Contract

A board that grants a charter shall enter into a performance contract with the principal or equivalent chief operating officer of the campus or program. The performance contract must specify enhanced authority granted to the principal or equivalent officer in order to achieve the academic goals that must be met by campus or program students.

Duration of Charter

A charter granted by the board expires ten years from the date the charter is granted unless the specified goals are substantially met, as determined by the board.

Education Code 12.0531

Neighborhood School

A board may determine that a campus granted a charter will be a neighborhood school.

The principal or equivalent chief operating officer of a neighborhood school shall manage the funding provided for the school under the Education Code and any other funding provided for the school in the manner the principal or other officer determines best meets the needs of the school's students. The district in which the school is located may retain that portion of funding that the district generally withholds from a campus for costs associated with the salary of the superintendent or other district governance.

The principal or equivalent chief operating officer of a neighborhood school may use school funding to purchase from the school district in which the school is located services for the school, including bus service, facilities maintenance services, and other services generally provided by a school district to district campuses. The school shall pay for each service an amount that reflects the actual cost to the district of providing the service for the number of the school's students for which the service is provided.

Education Code 12.0532

Student Eligibility

Eligibility criteria for admission of students to the charter campus or program must give priority on the basis of geographic and residency considerations. After priority is given on those bases, secondary consideration may be given to a student’s age, grade level, or academic credentials, in general or in a specific area, as necessary for the type of program offered.

The campus or program may require an applicant to submit an application not later than a reasonable deadline the campus or program establishes.

Education Code 12.065

Exemption

A campus or program for which a charter is granted is exempt from the instructional and academic rules and policies of the board from which the campus or program is specifically exempted in the charter and retains the authority to operate under the charter only if students at the campus or in the program perform satisfactorily as provided by the charter. *Education Code 12.054*

Charter Contract

A charter shall be in the form and substance of a written contract signed by a board president and the chief operating officer of the campus or program for which the charter is granted. *Education Code 12.060*

Each charter shall:

1. Satisfy the requirements governing charter campuses and programs; and
2. Include all information required to be in the content of the charter consistent with the information provided in the application and any modification a board requires.

Education Code 12.061

Content of Charter

Each charter granted must:

1. Describe the educational program to be offered, which may be a general or specialized program;
2. Provide that continuation of the charter is contingent on satisfactory student performance on state-required assessment instruments, satisfactory financial performance under state financial accountability provisions, and on compliance with other applicable accountability provisions;
3. Specify any basis, in addition to a basis specified in Education Code Chapter 12, Subchapter C, on which the charter may be revoked;
4. Prohibit discrimination in admission on the basis of national origin, ethnicity, race, religion, or disability;
5. Describe the governing structure of the campus or program;
6. Specify any procedure or requirement, in addition to those under Education Code Chapter 38, that the campus or program will follow to ensure the health and safety of students and employees; and
7. Describe the manner in which an annual audit of financial and programmatic operations of the campus or program is to be conducted, including the manner in which the campus or pro-

gram will provide information necessary for the district in which it is located to participate in PEIMS.

Education Code 12.059

Revision

A charter created by petition or a cooperative charter program may be revised with board approval and on a petition signed by a majority of the parents and a majority of the classroom teachers at the campus or in the program, as applicable.

A charter created without a petition may be revised with the approval of the board of trustees that granted the charter. The charter may be revised only before the first day of instruction or after the final day of instruction of a school year.

Education Code 12.062

Failure to Discharge or Refuse to Hire

A charter campus or program commits a material violation of its charter if the campus or program fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under Education Codes 12.1059, 22A.151, or 22A.157, as applicable. *Education Code 12.0631*

Applicability of Laws

A charter campus or program is subject to federal and state laws and rules governing public schools, except that the charter campus or program is subject to the Education Code and rules adopted thereunder only to the extent that the code or rule specifically provides. *Education Code 12.055(a)*

Education Code

A charter campus or program has the powers granted to schools under the Education Code.

A charter campus or program is subject to:

1. Provisions of the Education Code establishing criminal offenses;
2. Prohibitions, restrictions, or requirements of the Education Code, or a rule adopted under the Education Code, relating to:
    a. PEIMS, to the extent necessary to monitor compliance, as determined by the commissioner;
    b. Criminal history records under Subchapter C, Chapter 22;
    c. High school graduation under Section 28.025;
    d. Special education programs under Subchapter A, Chapter 29;

e. Bilingual education under Subchapter B, Chapter 29;

f. Prekindergarten programs under Subchapter E, Chapter 29, except class size limits for prekindergarten classes imposed under Education Code 25.112 [see EEB], which do not apply;

g. Extracurricular activities under Section 33.081 (i.e., “no pass-no play”);

h. Health and safety under Chapter 38 (including immunizations, dyslexia and related disorders, child abuse reporting, protective eye devices, tobacco and alcohol use, steroid use, access to medical records, and referrals to outside counselors);

i. The provisions of Subchapter A, Chapter 39;

j. Public school accountability and special investigations under Subchapters A, B, C, D, F, and J, Chapter 39, and Chapter 39A;

k. The duty to discharge or refuse to hire certain employees or applicants for employment under Education Code 12.1059; and

l. Parental options to retain a student under Education Code 28.02124. [See EIE]

Education Code 12.056

Open Meetings and Public Information Acts

With respect to the operation of a campus or program charter, the governing body of the charter campus or program is considered a governmental body for purposes of Government Code Chapters 551 (Open Meetings Act) and 552 (Public Information Act). *Education Code 12.057(a)*

Teacher Retirement System

A district may contract with another district or an open-enrollment charter holder for services at a campus charter. An employee of the district or open-enrollment charter holder providing contracted services to a campus charter is eligible for membership in and benefits from the Teacher Retirement System of Texas (TRS) if the employee would be eligible for membership and benefits if holding the same position at the employing district or open-enrollment charter school operated by the charter holder. *Education Code 12.055(b)*

An employee of an independent school district who is employed on a charter campus or program who qualifies for membership in TRS shall be covered under the system in the same manner and to the same extent as a qualified employee of the independent school

district who is employed on a regularly operating campus or in a regularly operating program.

An employee of a charter holder who is employed on a campus or in a program granted a charter and who qualifies for membership in TRS shall be covered under the system in the same manner and to the same extent as a qualified employee of an independent school district who is employed on a regularly operating campus or in a regularly operating program.

Education Code 12.057(b), (b-1)

Liability

A charter campus or program, and its employees and volunteers, are immune from liability to the same extent as a district, its employees, and volunteers, respectively. *Education Code 12.057(c)*

Placement on Probation or Revocation

A board may place on probation or revoke a charter it grants if the board determines that the campus or program:

1. Committed a material violation of the charter, including by failure to comply with the duty to discharge or refuse to hire certain employees or applicants for employment, as provided by Education Code 12.0631;
2. Failed to satisfy generally accepted accounting standards of fiscal management; or
3. Failed to comply with law governing a charter campus or program, another law, or a state agency rule.

The action a board takes under any item above shall be based on the best interest of campus or program students, the severity of the violation, and any previous violation the campus or program has committed.

Education Code 12.063

Procedure

Each board that grants a charter shall adopt a procedure to be used for placing on probation or revoking a charter it grants.

This procedure must provide an opportunity for a hearing to the campus or program for which the charter is granted and to parents and guardians of students at the campus or in the program. A hearing must be held on the campus or on one of the campuses in the case of a cooperative charter program.

Education Code 12.064

Exemption from Instruction

A parent or person standing in parental relation is entitled to remove the parent's child from a class or other school activity that conflicts with the parent's religious or moral beliefs if the parent presents or delivers to the teacher of the parent's child a written statement authorizing the removal of the child from the class or other school activity.

A parent or person standing in parental relation is not entitled to remove the parent's child from a class or other school activity to avoid a test or to prevent the child from taking a subject for an entire semester. This provision does not exempt a child from satisfying grade level or graduation requirements in a manner acceptable to the district and the Texas Education Agency (TEA).

Education Code 26.002, .010

See also *Mahmoud v. Taylor*, 145 S.Ct. 2332 (2025) (holding that the introduction of certain public school instruction, without parental notice and an opportunity to opt out, would likely burden parents' right to free exercise of religion).

Instructional Requirements and Prohibitions

The following provisions under Education Code 28.0022(a) apply to any course or subject, including an innovative course, for a grade level from kindergarten through grade 12.

Controversial Topics

A teacher may not be compelled to discuss a widely debated and currently controversial issue of public policy or social affairs.

A teacher who chooses to discuss a topic described above shall explore that topic objectively and in a manner free from political bias.

Education Code 28.0022(a)(1)-(a)(2)

Sexual Orientation and Gender Identity

A district or district employee may not provide or allow a third party to provide instruction, guidance, activities, or programming regarding sexual orientation and gender identity to students enrolled in prekindergarten through 12th grade.

This provision may not be construed to:

1. Limit a student's ability to engage in speech or expressive conduct protected by the First Amendment, U.S. Constitution or by Section 8, Article I, Texas Constitution, that does not result in material disruption to school activities;

2. Limit the ability of a person who is authorized by the district to provide physical or mental health-related services to provide the services to a student, subject to any required parental consent; or

3. Prohibit an organization whose membership is restricted to one sex and whose mission does not advance a political or social agenda from meeting on a district campus.

Education Code 28.0043

Political Activism and Advocacy Participation

A district or teacher may not require, make part of a course, or award a grade or course credit, including extra credit, for a student's:

1. Work for, affiliation with, or service learning in association with any organization engaged in:
    a. Lobbying for legislation at the federal, state, or local level, if the student's duties involve directly or indirectly attempting to influence social or public policy or the outcome of legislation; or
    b. Social policy advocacy or public policy advocacy;
2. Political activism, lobbying, or efforts to persuade members of the legislative or executive branch at the federal, state, or local level to take specific actions by direct communication; or
3. Participation in any internship, practicum, or similar activity involving social policy advocacy or public policy advocacy.

Education Code 28.0022(a)(3)

The above provisions do not apply to a student's participation in:

1. Community charitable projects, such as building community gardens, volunteering at local food banks, or other service projects;
2. An internship or practicum:
    a. For which the student receives course credit under a career and technology education program or under the P-TECH program established under Education Code 29.553; and
    b. That does not involve the student directly engaging in lobbying, social policy advocacy, or public policy advocacy; or
3. A program that prepares the student for participation and leadership in this country's democratic process at the federal, state, or local level through the simulation of a governmental process, including the development of public policy.

Education Code 28.0022(b)

Concepts Prohibited

A teacher, administrator, or other employee of a district may not require or make part of a course inculcation in the concept that:

1. One race or sex is inherently superior to another race or sex;
2. An individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
3. An individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race or sex;
4. An individual's moral character, standing, or worth is necessarily determined by the individual's race or sex;
5. An individual, by virtue of the individual's race or sex, bears responsibility, blame, or guilt for actions committed by other members of the same race or sex;
6. Meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race;
7. The advent of slavery in the territory that is now the United States constituted the true founding of the United States; or
8. With respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and equality.

A teacher, administrator, or other employee of a district may not teach, instruct, or train any administrator, teacher, or staff member of a state agency, school district, or open-enrollment charter school to adopt a concept listed above.

A teacher, administrator, or other employee of a district may not require an understanding of The 1619 Project.

Education Code 28.0022(a)(4)

Student Discussion

A district may not implement, interpret, or enforce any rule in a manner that would result in the punishment of a student for reasonably discussing the concepts described above in school or during a school-sponsored activity or have a chilling effect on reasonable student discussions involving those concepts in school or during a school-sponsored activity. *Education Code 28.0022(d)*

Employee or Contractor Discipline Policy	A district shall adopt a policy and procedure for the appropriate discipline, including termination, or a district employee or contractor who intentionally or knowingly engages in or assigns to another person an act prohibited by Education Code 28.0022. The district shall provide a physical and electronic copy of the policy and procedure to each district employee or contractor. *Education Code 28.0022(h)*
Limitations on Statute	Education Code 28.0022 may not be construed as limiting the teaching of or instruction in the essential knowledge and skills adopted under Education Code Chapter 28, Subchapter A. Education Code 28.0022 does not create a private cause of action against a teacher, administrator, or other employee of a district. Education Code 28.0022 may not be construed as prohibiting a teacher employed by a district from directing a classroom activity that involves students communicating with an elected official so long as the district, school, or teacher does not influence the content of a student's communication. *Education Code 28.0022(e)-(g)*

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 F: STUDENTS

FA PARENT RIGHTS AND RESPONSIBILITIES

FB EQUAL EDUCATIONAL OPPORTUNITY
FBA Service Animals

FC SCHOOL ATTENDANCE AREAS

FD ADMISSIONS
FDA Interdistrict Transfers
FDAA Public Education Grants
FDB Intradistrict Transfers and Classroom Assignments
FDC Homeless Students
FDD Military Dependents
FDE School Safety Transfers

FE ATTENDANCE
FEA Compulsory Attendance
FEB Attendance Accounting
FEC Attendance for Credit
FED Attendance Enforcement
FEE Open/Closed Campus
FEF Released Time

FF STUDENT WELFARE
FFA Wellness and Health Services
FFAA Physical Examinations
FFAB Immunizations
FFAC Medical Treatment
FFAD Communicable Diseases
FFAE School-Based Health Centers
FFAF Care Plans
FFB Crisis Intervention
FFBA Trauma-Informed Care
FFC Student Support Services
FFD Student Insurance
FFE Counseling and Mental Health
FFEA Counseling
FFEB Mental Health
FFF Student Safety
FFFA Supervision of Students
FFFB Safety Patrols
FFFD Bicycle/Automobile Use
FFFF School Buses
FFG Child Abuse and Neglect

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 F: STUDENTS

FFH	Freedom from Discrimination, Harassment, and Retaliation
FFI	Freedom from Bullying
FG	STUDENT AWARDS AND SCHOLARSHIPS
FH	STUDENT VOLUNTEERS
FI	IDENTIFICATION OF STUDENTS
FJ	STUDENT FUNDRAISING
FL	STUDENT RECORDS
FLA	Confidentiality of Student Health Information
FM	STUDENT ACTIVITIES
FMA	School-Sponsored Publications
FMB	Student Government
FMD	Social Events
FME	Performances
FMF	Contests and Competition
FMG	Travel
FMH	Commencement
FN	STUDENT RIGHTS AND RESPONSIBILITIES
FNA	Student Expression
FNAA	Distribution of Nonschool Literature
FNAB	Use of School Facilities for Nonschool Purposes
FNB	Involvement in Decision Making
FNC	Student Conduct
FNCA	Dress Code
FNCB	Care of School Property
FNCC	Prohibited Organizations and Hazing
FNCD	Tobacco Use and Possession
FNCE	Personal Communication Devices/Electronic Devices
FNCF	Alcohol and Drug Use
FNCG	Weapons
FNCH	Assaults
FNCI	Disruptions
FND	Married Students
FNE	Pregnant Students
FNF	Investigations and Searches
FNG	Student and Parent Complaints/Grievances
FO	STUDENT DISCIPLINE
FOA	Removal by Teacher or Bus Driver

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 F: STUDENTS

FOB	Suspension
FOC	Placement in a Disciplinary Alternative Education Setting
FOCA	Disciplinary Alternative Education Program Operations
FOD	Expulsion
FODA	Juvenile Justice Alternative Education Program
FOE	Emergency and Alternative Placement
FOF	Students with Disabilities
FP	STUDENT FEES, FINES, AND CHARGES

Note: This policy encompasses many, but not all, rights held by parents of Texas public school children. Additional information regarding parent rights exists throughout the policy manual, including:

- District-level and site-based decision making at BQA and BQB
- Access to review instructional and library materials at the EF series
- Requests for educational programs at EHA
- Human sexuality instruction at EHAA
- Special education at the EHBA series
- Student retention at EIE
- Homeschool rights at FD
- Consent to medical treatment, collection and use of certain health and biometric information, and other activities at the FFA series
- Consent to mental health and counseling at FFEA and FFEB
- Access to student records at FL
- Complaints and grievances processes at FNG
- Access to campus and campus visitor policies at GKC

Infringement of Parental Rights Prohibited

The fundamental rights granted to parents by their Creator and upheld by the United States Constitution, the Texas Constitution, and the laws of this state, including the right to direct the moral and religious training of the parent's child, make decisions concerning the child's education, and consent to medical, psychiatric, and psychological treatment of the parent's child under Family Code 151.001, may not be infringed on by any public elementary or secondary school or state governmental entity, including the state or a political subdivision of the state, unless the infringement is necessary to further a compelling state interest, such as providing life-saving care to a child, and narrowly tailored using the least restrictive means to achieve that compelling state interest. *Education Code 1.009*

Education Code Chapter 26

As provided under Family Code 151.001, a parent has the right to direct the moral and religious training of the parent's child, make decisions concerning the child's education, and consent to medi-

cal, psychiatric, and psychological treatment of the child without obstruction or interference from this state, including from a school district or any other governmental entity. *Education Code 26.001(a)*

Parents are partners with educators, administrators, and the board in their children's education. Parents shall be encouraged to actively participate in creating and implementing educational programs for their children. *Education Code 26.001(a-1)*

Unless otherwise provided by law, a board, an administrator, an educator, or other person shall comply with Education Code 1.009 [see Infringement of Parental Rights Prohibited, above] and may not limit parental rights or withhold information from a parent regarding the parent's child. A school district may not be considered to have withheld information from a parent regarding the parent's child if the district's actions are in accordance with other law, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). *Education Code 26.001(c), (c-1)*

"Parent" Defined

For purposes of Education Code Chapter 26 (Parental Rights), "parent" includes a person standing in parental relation, but does not include a person as to whom the parent-child relationship has been terminated or a person not entitled to possession of or access to a child under a court order. Except as provided by federal law, all rights of a parent under Education Code Title 2 and all educational rights under Family Code 151.001(a)(10) shall be exercised by a student who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Family Code Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order. *Education Code 26.002*

Parental Rights

Parental rights listed in Education Code Chapter 26 are:

1. Rights concerning academic programs. *Education Code 26.003, .0061* [See EHA, EIF, FDB, and FMH]
2. Access to student records. *Education Code 26.004* [See FL]
3. Access to state assessments. *Education Code 26.005* [See EKB]
4. Access to teaching materials and test results, and observation of virtual instruction. *Education Code 26.006* [See EF series and EKB]
5. Access to board meetings, other than a closed meeting under the Open Meetings Act. *Education Code 26.007* [See BE and BEC]

6. Right to full information concerning a student. *Education Code 26.008(a)(1)* [See below and at DF, FFE series, and FM]
7. Notification of suspicion of criminal offense committed against a parent's child. *Education Code 26.008(a)(2)* [See FFF]
8. Right to information concerning special education and education of students with learning disabilities. *Education Code 26.0081* [See FB]
9. Requests for public information. *Education Code 26.0085* [See GBA and GBAA]
10. Consent required for certain activities. *Education Code 26.009* [See EHA, FFA, FFE, FL, FM, and FO]
11. Refusal of psychiatric or psychological treatment of child as basis for report of neglect. *Education Code 26.0091* [See FFG]
12. Exemption from instruction. *Education Code 26.010* [See EMB]
13. Right to have a grievance addressed in accordance with a policy adopted by the district's board. *Education Code 26.011* [See FNG]
14. Right to information related to the release of student directory information under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). *Education Code 26.013* [See FL]
15. Selection of educational setting. *Education Code 26.0025* [See below]

Right to Information — A parent is entitled to full information regarding the school activities of a parent's child, except as provided by Education Code 38.004 (child abuse investigations). *Education Code 26.008(a)(1)*

Parental Rights Form — The Texas Education Agency (TEA) shall develop a form for use by school districts in providing information about parental rights and options a board is required to disclose to a child's parent on enrollment and at the beginning of each school year under Education Code 26.001(d)(4). A district shall post the form in a prominent location on the district's website. *Education Code 26.001(e)*

Right to Select School — A parent is entitled to choose the educational setting for the parent's child, including school, private school, or home school. *Education Code 26.0025*

A parent has the right to designate the school the child will attend and to enroll the child in school, subject to any eligibility or admissions requirements. *Family Code 151.001(a)(11)*

Unless limited by court order, a parent appointed as sole managing conservator of a child has the exclusive right to designate the school the child will attend and to enroll the child in school, subject to any eligibility or admissions requirements. *Family Code 151.132*

The board may not adopt a rule or policy that regulates an education program of a home school. *Education Code 1.010*

Right to Attend School Activities

Unless limited by court order, a parent appointed as a conservator of a child has at all times the right to attend school activities, including school lunches, performances, and field trips. *Family Code 153.073(a)(6)*

Objection to School Assignment

The parent or person standing in parental relation to any student may object to the student's school assignment. Upon receiving a written petition to request or object to a student's assignment, a board shall follow the procedures set forth at Education Code 25.034. *Education Code 25.033(2), .034* [See FDB]

Challenge to Education Records

A district shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the records is inaccurate, misleading, or in violation of the privacy rights of the student. *34 C.F.R. 99.21* [See FL]

Public Information Requests

A district that receives a request from a parent for public information relating to the parent's child shall comply with Government Code Chapter 552 (Public Information Act). A district shall also comply with the deadlines and provisions set forth at Education Code 26.0085. *Gov't Code Ch. 552; Education Code 26.0085* [See GBAA]

Policy on Parental Engagement

The board shall develop a parental engagement policy that:

1. Provides for an internet portal through which parents of students enrolled in the district may submit comments to campus or district administrators and the board;
2. Requires the board to prioritize public comments by presenting those comments at the beginning of each board meeting; and
3. Requires board meetings to be held outside of typical work hours.

Education Code 26.0071

Parental Participation Plan

Each board shall develop a plan for parental participation in the district to improve parent and teacher cooperation, including in the areas of homework, school attendance, and discipline. *Education Code 26.001(d)(2)*

Title I Funding — Parent Right to Know

Professional Qualifications

At the beginning of each school year, a district shall notify the parents of each student attending any school receiving funds under Title I, Part A of the Elementary and Secondary Education Act (ESEA), that the parents may request, and the district will provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student's classroom teachers. *20 U.S.C. 6312(e)(1)(A)* [See DBA]

Title I Required Notice

A school that receives funds under Title I, Part A of ESEA shall provide to each individual parent of a child who is a student in such school, with respect to such student:

1. Information on the level of achievement and academic growth of the student, if applicable and available, on each of the required state academic assessments [see EKB]; and
2. Timely notice that the student has been assigned, or has been taught for four or more consecutive weeks by, a teacher who does not meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned [see DBA].

20 U.S.C. 6312(e)(1)(B)

For information on the parent and family engagement requirements for districts receiving funds under the Elementary and Secondary Education Act, see EHBD.

Information Collection

U.S. ED-Funded Surveys (PPRA)

Under the Protection of Pupil Rights Amendment (PPRA), no student shall be required, as part of any program funded in whole or in part by the United States Department of Education (U.S. ED), to submit to a survey, analysis, or evaluation that reveals information concerning the following topics without the prior consent of the student (if the student is an adult or emancipated minor), or, in the case of an unemancipated minor, without the prior written consent of the parent:

1. Political affiliations or beliefs of the student or the student's parents.
2. Mental and psychological problems of the student or the student's family.
3. Sex behavior and attitudes.

4. Illegal, anti-social, self-incriminating, and demeaning behavior.

5. Critical appraisals of other individuals with whom students have close family relationships.

6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.

7. Religious practices, affiliations, or beliefs of the student or student's parent.

8. Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program.

20 U.S.C. 1232h(b)

Information Collection Funded by Other Sources

Policies

Except as provided by 20 U.S.C. 1232h(a) or (b) [see U.S. ED Funded Surveys, above], as a condition of receiving funds for a program funded in whole or in part by the U.S. ED, a district shall develop and adopt policies, in consultation with parents, pursuant to 20 U.S.C. 1232h(c)(1), regarding the following:

1. The parent's right to inspect a survey created by a third party before the survey is administered or distributed by a school to the student and any applicable procedures for granting a request by a parent for reasonable access to such survey within a reasonable period of time after the request is received.

2. A district's arrangements to protect student privacy in the event a survey containing one or more of the items listed under U.S. ED-Funded Surveys, above, is administered or distributed to a student.

3. The parent's right to inspect any instructional material used in the educational curriculum for the student and any applicable procedures for granting a request by a parent for reasonable access to instructional material within a reasonable period of time after the request is received.

4. The administration of physical examinations or screenings that a district may administer to the student.

5. The collection, disclosure, or use of personal information collected from students for the purpose of marketing or selling that information. This provision does not apply to use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for or to students or educational institutions, such as recruiters, book clubs, curriculum and instruc-

tional materials used by schools, sale by students of products or services to raise funds for school-related or education-related activities, or student recognition programs.

6. The parent's right to inspect any instrument used in collection of personal information in item 5 above, before the instrument is administered and any applicable procedures for granting a request by a parent for reasonable access to such instrument within a reasonable period of time after the request is received.

A district need not develop and adopt new policies if the TEA or the district had in place, on January 8, 2002, policies covering the requirements of 20 U.S.C. 1232h(c)(1). [See CRD, FFAA, FL, and FNG]

Parental Notification

A district shall provide for reasonable notice of the adoption or continued use of such policies directly to the parents of the students enrolled in schools served by the district. At a minimum, a district shall:

1. Provide notice at least annually, at the beginning of the school year and within a reasonable time after any substantive change in the policies; and

2. Offer an opportunity for the parent to opt the student out of participation in an activity described below.

A district shall directly notify the parent of a student, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when activities, described below, are scheduled or expected to be scheduled. The following activities require notification under this provision:

1. Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information.

2. The administration of any survey containing one or more items described at U.S. ED-Funded Surveys, above.

3. Any nonemergency, invasive physical examination or screening that is required as a condition of attendance, administered and scheduled by the school in advance, and not necessary to protect the immediate health and safety of the student or of other students.

20 U.S.C. 1232h(c)(1)-(4) [See FFAA]

"Personal Information" Defined

The term "personal information" means individually identifiable information, including a student's:

1. First and last name;
2. Home or physical address, including street name and city or town;
3. Telephone number; or
4. Social security identification number.

20 U.S.C. 1232h(c)(6)(E)

For information about parental access to instructional materials under the PPRA, see FA.

Videotapes and Recordings

A district employee or contractor must obtain the written consent of a child's parent before the employee or contractor may make or authorize the making of a videotape of a child or record or authorize the recording of a child's voice.

Exceptions

A district employee or contractor is not required to obtain the consent of a child's parent before the employee or contractor may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used only for:

1. The purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses;
2. A purpose related to a cocurricular or extracurricular activity;
3. A purpose related to regular classroom instruction;
4. Media coverage of the school; or
5. A purpose related to the promotion of student safety under Education Code 29.022.

Education Code 26.009 [See EHA, EHBAF, FM, and FO]

Student Clubs

A school district must require the written consent of the parent of a student enrolled in the district before the student may participate in a student club authorized or sponsored at the district. [See FNAB]
Education Code 33.0815

Parent Portal

The District shall establish a parent portal on the District's website through which parents may submit comments to campus administrators, District administrators, and the Board.

The Superintendent shall develop administrative regulations related to the portal, including placement on the District or campus websites and how campus or District administrators are to address comments received from parents through the portal.

General Eligibility

A board or its designee shall admit into the public schools of a district free of tuition all persons who are over five and younger than 21 years of age on September 1 of any school year in which admission is sought, and may admit a person who is at least 21 and under 26 for the purpose of completing the requirements for a high school diploma, if any of the following conditions exist:

Student and Parent

The person and either parent reside in the district.

Conservator

The person does not reside in the district, but one of the parents resides in the district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person.

Guardian or Person Having Lawful Control

The person and his or her guardian or other person having lawful control under an order of a court reside in the district.

Parental Child Safety Placement

A person is the subject of a parental child safety placement agreement under Family Code 264.902 and the person's parent or guardian provides to the district a copy of a letter from the Department of Family and Protective Services indicating that the child is the subject of such an agreement and that the address of the child's residence during the agreement is in the district.

Students Living Separate and Apart

The person is under the age of 18 and has established a separate residence in the district apart from his or her parent, guardian, or other person having lawful control under an order of a court and has established that the person's presence in the district is not for the primary purpose of participation in extracurricular activities. A board is not required to admit such person, however, if the person has:

1. Engaged in conduct that resulted in removal to a disciplinary alternative education program or expulsion within the preceding year;
2. Engaged in delinquent conduct or "conduct in need of supervision" and is on probation or other conditional release for that conduct; or
3. Been convicted of a criminal offense and is on probation or other conditional release.

Education Code 25.001(a)-(b), (c-1), (d)

Students Who Are Homeless

The person is homeless. [See also FDC]

1. "Child who is homeless," "person who is homeless," and "student who is homeless" have the meaning assigned to the

term homeless children and youths under the McKinney-Vento Homeless Assistance Act.

2. "Homeless children" under the McKinney-Vento Homeless Assistance Act, means children or youths who lack a fixed, regular, and adequate nighttime residence; and includes:

   a. Children who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

   b. Children who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

   c. Children who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

   d. Migratory children living in circumstances described above. "Migratory child'' means a child who made a qualifying move in the preceding 36 months:

      (1) As a migratory agricultural worker or a migratory fisher; or

      (2) With, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher. [See EEB]

Education Code 5.001(1-a), 25.001(b)(5); 20 U.S.C. 6399; 42 U.S.C. 11434a(2)

[For information regarding the transfer of records and other transition requirements for a student who is homeless, see FFC.]

Foreign Exchange Students

The person is a foreign exchange student placed with a host family that resides in the district by a nationally recognized foreign exchange program, unless the district has applied for and been granted a waiver by the commissioner of education because:

1. This requirement would impose a financial or staffing hardship on the district;

2. The admission would diminish the district's ability to provide high-quality education services for the district's domestic students; or

3. The admission would require domestic students to compete with foreign exchange students for educational resources.

Education Code 25.001(b)(6), (e)

Students in Residential Facility — The person resides at a residential facility, as defined in Education Code 5.001, located in the district. For purposes of enrollment, a person who resides in a residential facility is considered a resident of the district in which the facility is located. *Education Code 25.001(b)(7), 29.012(c)*

Students Over 18 — The person resides in the district and is 18 or older or the person's disabilities of minority have been removed. *Education Code 25.001(b)(8)*

Resident Grandparent — The person does not reside in the district but the grandparent of the person:

1. Resides in the district; and
2. Provides a substantial amount of after-school care for the person as determined by the board.

Education Code 25.001(b)(9)

Residence Homestead — The person and either parent of the person reside in a residence homestead, as defined by Tax Code 11.13(j), that is located on a parcel of property any part of which is located in the district. *Education Code 25.001(b)(10)*

Proof of Eligibility — A district may require evidence that a person is eligible to attend the public schools of the district at the time it considers an application for admission of the person. A board or its designee shall establish minimum proof of residency acceptable to a district. A board or its designee may make reasonable inquiries to verify a person's eligibility for admission. When admission is sought under the provision at Students Living Separate and Apart above, a board shall determine whether an applicant qualifies as a resident of a district and may adopt reasonable guidelines for making that determination as necessary to protect the best interest of students. *Education Code 25.001(c), (d)*

"Residence" Defined — "Residence" requires living in the district and having the present intention to remain there. *Martinez v. Bynum, 461 U.S. 321 (1983*)

A district may withdraw any student who ceases to be a resident. *Daniels v. Morris, 746 F.2d 271 (5th Cir. 1984)*

Active-Duty Parent — A person whose parent or guardian is an active-duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, may establish

residency for purposes of eligibility of admission by providing to the district a copy of a military order requiring the parent's or guardian's transfer to a military installation in or adjacent to the district 's attendance zone. *Education Code 25.001(c-1)*

A person who establishes residency under Education Code 25.001(c-1) shall provide to the district proof of residence in the district's attendance zone not later than the 90th day after the arrival date specified in the military order. For purposes of this provision, "residence" includes residence in a military temporary lodging facility. *Education Code 25.001(c-2)*

Foreign Military Force Parent

A school district board may adopt a policy to allow a person whose parent or guardian is an active-duty member of a foreign military force stationed in Texas to establish the person's age for purposes of determining eligibility to attend a public school by demonstrating that the person will turn the required age during the school year for which the person is seeking admission. *Education Code 25.001(c-3)*

Immigration Status

Denying enrollment based upon immigration status to children who are not legally admitted into the United States violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *Plyler v. Doe, 457 U.S. 202 (1982)*

High School Equivalency Certificate

A student who has received a high school equivalency certificate is entitled to enroll in a public school in the same manner as any other student who has not received a high school diploma. *Education Code 29.087(h)*

Substitute for Parent or Guardian

A board by policy may allow a person showing evidence of legal responsibility for a child other than an order of a court to substitute for a guardian or other person having lawful control of the child under court order. *Education Code 25.001(j)*

Authorization Agreement

"Adult caregiver" means an adult person whom a parent has authorized to provide temporary care for a child under Family Code Chapter 34. *Family Code 34.0015(1)*

A parent, as defined in Family Code 101.024, or both parents of a child may enter into an authorization agreement with an adult caregiver to authorize the adult caregiver to perform acts described in Family Code 34.002 in regard to the child, such as:

1. Authorizing medical, dental, psychological, or surgical treatment and immunization of the child, including executing any consents or authorizations for the release of information as required by law relating to the treatment or immunization;

2. Enrolling the child in the district; and

3. Authorizing the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities.

Family Code 34.002

A parent may enter into an authorization agreement with an adult caregiver with whom a child is placed under a parental child safety placement agreement approved by the Department of Family and Protective Services (DFPS) to allow the person to perform the acts described above with regard to the child during an investigation of abuse or neglect or while the department is providing services to the parent. *Family Code 34.0021*

The authorization agreement must conform to the requirements of Family Code Chapter 34.

A child who is the subject of an authorization agreement is not considered to be placed in foster care and the parties to the agreement are not subject to any law or rule governing foster care providers. *Family Code 34.0022(b)*

An authorization agreement does not affect the rights of the child's parent or legal guardian regarding the care, custody, and control of the child, and does not mean that the adult caregiver has legal custody of the child. *Family Code 34.007(b)*

Only one authorization agreement may be in effect for a child at any time. Execution of a subsequent authorization agreement does not by itself supersede, invalidate, or terminate a prior authorization agreement. An authorization agreement is void if it is executed while a prior authorization agreement remains in effect. *Family Code 34.002(d), .008(f)*

An authorization agreement is for a term of six months and renews automatically for six-month terms unless an earlier expiration date is stated in the agreement, the agreement is terminated under Family Code 34.008, or a court authorizes continuation. *Family Code 34.0075*

Immunity

A person who is not a party to the authorization agreement who relies in good faith on the authorization agreement, without actual knowledge that the authorization agreement is void, revoked, or invalid, is not subject to civil or criminal liability to any person, and is not subject to professional disciplinary action, for that reliance if the agreement is completed as required by Family Code Chapter 34. *Family Code 34.007(a)*

Note: The Authorization Agreement for Voluntary Adult Caregiver (PDF)[1] is available on the DFPS website.

Temporary Authorization for Care

A person eligible to consent to treatment of a child under Family Code 32.001 or a person eligible to enter an authorization agreement [see Authorization Agreement, above] may seek a court order for temporary authorization for care of a child by filing a petition in the district court in the county in which the person resides if:

1. The child has resided with the person for at least the 30 days preceding the date the petition was filed; and
2. The person does not have an authorization agreement or other signed, written documentation from a parent, conservator, or guardian that enables the person to provide necessary care for the child.

Family Code 35.001-.002

The order may authorize the petitioner to, among other things:

1. Consent to medical, dental, psychological, and surgical treatment and immunization of the child;
2. Enroll the child in the district; and
3. Authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities.

A temporary authorization order does not affect the rights of the child's parent, conservator, or guardian regarding the care, custody, and control of the child, and does not establish legal custody of the child. *Family Code 35.007(b)*

Immunity

A person who relies in good faith on a temporary authorization order is not subject to civil or criminal liability to any person, or to professional disciplinary action. *Family Code 35.007(a)*

Students in Foster Care

A child placed in foster care by an agency of the state or a political subdivision shall be permitted to attend schools in the district in which the foster parents reside free of any charge to the foster parents or to the agency. A durational residence requirement may not be used to prohibit that child from fully participating in any activity sponsored by a district. *Education Code 25.001(f)*

A student who was enrolled in a primary or secondary public school before the student entered the conservatorship of DFPS and who is placed at a residence outside the attendance area for a school or outside a district is entitled to continue to attend the

school in which the student was enrolled immediately before entering conservatorship until the student successfully completes the highest grade level offered by the school at the time of placement without payment of tuition. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of DFPS for the duration of the student's enrollment in the school. *Education Code 25.001(g)*

If a student who is in the conservatorship of DFPS is enrolled in a primary or secondary public school, other than the school in which the student was enrolled at the time the student was placed in the conservatorship of DFPS, the student is entitled to continue to attend that school without payment of tuition until the student successfully completes the highest grade level offered by the school at the time of enrollment in the school, even if the child's placement is changed to a residence outside the attendance area for that school or outside the district. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of DFPS for the duration of the student's enrollment in the school. *Education Code 25.001(g-1)*

A written case plan for any child in foster care under the responsibility of the state must include a plan for ensuring the educational stability of the child while in foster care, including:

1. Assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child in enrolled at the time of placement; and

2. An assurance that the appropriate state agency has coordinated with a district to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or if remaining in that school is not in the best interests of the child, assurances by the state agency and the district to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

42 U.S.C. 675(1)(G), 675a [See CNA]

[For information regarding the transfer of records and other transition requirements for a student who is in substitute care, see FFC.]

Transfers from Other States

A district shall charge tuition for a student who resides in a residential facility and whose maintenance or expenses are paid in whole or in part by another state or the United States. Any such tuition charge must be submitted to the commissioner for approval. The attendance of students admitted under this provision shall not be

counted for purposes of allocating state funds to a district. *Education Code 25.003*

Students Holding F-1 Student Visas

If a student is required, as a condition of obtaining or holding the appropriate U.S. student visa, to pay tuition to the district that the student attends to cover the cost of the student's education provided by the district, the district shall accept tuition for the student in an amount equal to the full unsubsidized per capita cost of providing the student's education for the period of the student's attendance at school in the district.

The commissioner shall develop guidelines for determining the amount of the full unsubsidized per capita cost of providing a student's education. A district may not accept tuition in an amount greater than the amount computed under the commissioner's guidelines unless the commissioner approves a greater amount as a more accurate reflection of the cost of education to be provided by the district.

The attendance of a student for whom a district accepts tuition is not counted for purposes of allocating state funds to the district.

Education Code 25.0031

Note: Enrolling students with F-1 visas is optional. If the district is interested in enrolling students with F-1 visas, it must comply with the federal Student and Exchange Visitor Program[2] (SEVP) under the Department of Homeland Security.

Texas Juvenile Justice Department

A school-age child of an employee of the Texas Juvenile Justice Department (TJJD) residing in an adjacent district may attend school in a district free of charge to his or her parents or guardian. Any tuition required by the admitting district shall be paid by the district from which the student transfers out of any funds appropriated to the TJJD facility. *Education Code 25.042*

Enrollment

A child must be enrolled by the child's parent, guardian, or other person with legal control under a court order. A district shall record the name, address, and date of birth of the person enrolling the child. *Education Code 25.002(f)*

Legal Surname

A student must be identified by the student's legal surname as it appears on the student's birth certificate or other document suitable as proof of the student's identity, or in a court order changing the student's name. *Education Code 25.0021*

Required Documentation

If a parent or other person with legal control of a child enrolls the child in a public school, the parent or other person, or the district in which the child most recently attended school, shall furnish to the district all of the following:

1. The child's birth certificate, or another document suitable as proof of the child's identity.
2. A copy of the child's records from the school the child most recently attended if he or she was previously enrolled in a school in Texas or in another state, including for a child who most recently attended a Texas public school, a copy of the child's disciplinary record and any threat assessment involving the child's behavior conducted under Education Code 37.115 [see FFB].
3. A record showing that the child has the immunizations required by Education Code 38.001, proof that the child is not required to be immunized, or proof that the child is entitled to provisional admission. [See FFAB]

Education Code 25.002(a)

A district must furnish information under items 1 and 2 not later than the 10th working day after the date the district receives a request for the information.

A parent or other person with legal control of a child under a court order must furnish information under items 1 and 2 not later than the 30th day after the date a child is enrolled in a public school.

If a parent or other person with legal control of a child under a court order requests that a district transfer a child's student records, the district to which the request is made shall notify the parent or other person as soon as practicable that the parent or other person may request and receive an unofficial copy of the records for delivery in person to a school in another district.

Education Code 25.002(a-1)

Residential Facility

Except for a juvenile pre-adjudication secure detention facility or a juvenile post-adjudication secure correctional facility, a residential facility shall provide to a district that provides educational services to a student placed in the facility any information retained by the facility relating to:

1. The student's school records, including records regarding special education eligibility or services, behavioral intervention plans, school-related disciplinary actions, and other documents related to the student's educational needs;

2. Any other behavioral history information regarding the student that is not confidential under another law; and

3. The student's record of convictions or the student's probation, community supervision or parole status, as provided to the facility, if necessary to provide education services to the student.

Education Code 29.012(f), (g)

Summer School Enrollment

A district shall permit a person who is eligible under Education Code 25.001 [see General Eligibility, above] to attend school in the district but who is not enrolled in school in the district to enroll in a district summer school course on the same basis as a district student, including satisfaction of any course eligibility requirement and payment of any fee authorized under Education Code 11.158 [see FP] that is charged in connection with the course.

This requirement does not apply to enrollment in a Summer Intensive Mathematics Instruction Program under Education Code 29.088, a Summer Intensive Science Instruction Program under Education Code 29.090, or in a similar intensive program.

Education Code 25.008

Enrollment in Prekindergarten and Kindergarten

A parent or guardian may elect for a student to enroll in prekindergarten, if the student would have been eligible to enroll in prekindergarten during the previous school year under Education Code 29.153(b) [see EHBG] and the student has not yet enrolled in kindergarten, or enroll in kindergarten, if the student would have been eligible to enroll in kindergarten in the previous school year and has not yet enrolled in first grade. *Education Code 28.02124* [See EIE]

Food Allergy Information

On enrollment, a district shall request, by providing a form or otherwise, that a parent or other person with legal control of the child under a court order disclose whether the child has a food allergy or a severe food allergy that, in the judgment of the parent or other person with legal control, should be disclosed to the district to enable the district to take any necessary precautions regarding the child's safety [see FB and FFAF]; and specify the food to which the child is allergic and the nature of the allergic reaction.

The district shall maintain the confidentiality of the provided information, and may disclose the information to teachers, school counselors, school nurses, and other appropriate school personnel only to the extent consistent with district policy under Education Code 38.009 and permissible under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g. [See FL]

"Severe food allergy" means a dangerous or life-threatening reaction of the human body to a food-borne allergen introduced by inhalation, ingestion, or skin contact that requires immediate medical attention.

Education Code 25.0022(a)-(c)

Child in DFPS Possession

A district shall enroll a child without the required documentation if DFPS has taken possession of the child. DFPS shall ensure that the required documentation is furnished to a district not later than the 30th day after the date the child is enrolled. *Education Code 25.002(g)*

Inconsistent Documentation

If a child is enrolled under a name other than the name that appears in the identifying documents or records, a district shall notify the missing children and missing persons information clearinghouse of the child's name as shown on the identifying records and the name under which the child is enrolled.

Missing Documentation

If the required documents and other records are not furnished to a district within 30 days after enrollment, the district shall notify the police department of the city or the sheriff's department of the county in which the district is located and request a determination of whether the child has been reported as missing.

Education Code 25.002(b)-(c)

Parent Contact Information

The parent of a student enrolled in a district shall provide in writing to the district:

1. On enrollment of the student in the district and not later than two weeks after the beginning of each school year, the parent's address, phone number, and email address; and
2. If the parent's contact information changes during the school year, not later than two weeks after the date the information changes, the parent's updated information.

Education Code 26.0125

Students Under 11

On enrollment of a child under 11 years of age in a school for the first time at the school, the school shall:

1. Request from the person enrolling the child the name of each previous school attended by the child;
2. Request from each school identified in item 1 the school records for the child and, if the person enrolling the child provides copies of previous school records, request verification from the school of the child's name, address, date, and grades and dates attended; and

3. Notify the person enrolling the student that not later than the 30th day after enrollment, or the 90th day if the child was not born in the United States, the person must provide:

   a. A certified copy of the child's birth certificate; or

   b. Other reliable proof of the child's identity and age and a signed statement explaining the person's inability to produce a copy of the child's birth certificate.

If a person enrolls a child under 11 years of age in school and does not provide the valid prior school information or documentation required, the school shall notify the appropriate law enforcement agency before the 31st day after the person fails to comply.

Code of Criminal Procedure 63.019

False Information

When accepting a child for enrollment, a district shall inform the parent or other person enrolling the child that presenting a false document or false records in connection with enrollment is a criminal offense under Penal Code 37.10 (Tampering with Governmental Records) and that enrolling the child under false documents makes the person liable for tuition or other costs as provided below. *Education Code 25.002(d)*

In addition to the penalty under Penal Code 37.10, a person who knowingly falsifies information on a form required for a student's enrollment in a district is liable to the district if the student is not eligible for enrollment but is enrolled on the basis of false information. For the period during which the ineligible student is enrolled, the person is liable for the maximum tuition fee a district may charge [see FDA] or the amount a district has budgeted per student as maintenance and operating expense, whichever is greater. *Education Code 25.001(h)*

A district may include on its enrollment form notice of the legal penalties and liability for falsifying information on the form. *Education Code 25.001(i)*

Placement of Transfers

Credits and Records

A district shall accept all credits earned toward state graduation requirements by students in accredited Texas school districts, including credits earned in accredited summer school programs. Credits earned in local credit courses may be transferred at a district's discretion. Transfer students shall not be prohibited from attending school pending receipt of transcripts or academic records from the district the student previously attended. *19 TAC 74.26(a)(1)*

A district shall grant a student credit toward the academic course requirements for high school graduation for courses the student

successfully completes in TJJD educational programs. *Education Code 30.104(a)*

Each district shall consider course credit earned by a student while in a juvenile justice alternative education program as credit earned in a district school. *Education Code 37.011(d)*

Nonpublic Schools

Records and transcripts of students from Texas nonpublic schools or from out of state or out of the country (including foreign exchange students) shall be evaluated, and students shall be placed promptly in appropriate classes. A district may use a wide variety of methods to verify the content of courses for which a transfer student has earned credit. *19 TAC 74.26(a)(2)*

[For information regarding educational placement of students who are homeless or in substitute care, see FFC.]

Foundation School Program

A person is entitled to the benefits of the available school fund for a school year if:

1. On September 1 of the year, the person:
    a. Is at least five years of age and under 21 years of age, and has not graduated from high school;
    b. Is at least 21 years of age and under 26 years of age and is admitted by a school district to complete the requirements for a high school diploma; or
    c. Is at least 18 years of age and under 50 years of age and is enrolled in an adult education program provided under the adult high school charter school program under Education Code Chapter 12, Subchapter G.
2. The person is enrolled in prekindergarten under Education Code 29.153 [see EHBG].
3. The person is younger than five years of age and performs satisfactorily on the state assessment instrument administered to third graders and a district has adopted a policy to admit students younger than five years of age.
4. The person is enrolled in the first grade and is at least six years of age at the beginning of the current school year or has been enrolled in the first grade, or has completed kindergarten, in the public schools of another state before transferring to a Texas public school.

Education Code 25.001(a), 48.003

Screening

The principal of each district school shall ensure that each student admitted to that school has complied with requirements for screening of special senses and communication disorders, spinal screening, and a risk assessment for Type 2 diabetes, or has submitted an affidavit of exemption. *Health and Safety Code 36.005, 37.002, 95.003(c)* [See FFAA]

Pest Control Information

Chief administrators or the integrated pest management (IPM) coordinators of schools must notify the parents or guardians of children attending the facility in writing that pesticides are periodically applied indoors and outdoors, and that information on the times and types of applications and prior notification is available upon request. Such notification must be made at the time of the students' registration. Telephonic, written, or electronic notification of planned applications will meet the notification requirements. *4 TAC 7.148(c); Occupations Code 1951.455(b)* [See CLB]

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[1] Authorization Agreement for Voluntary Adult Caregiver (PDF): https://www.dfps.texas.gov/Application/Forms/showFile.aspx?NAME=2638.pdf
[2] Student and Exchange Visitor Program: https://www.ice.gov/sevis

Compulsory Attendance

Students who are at least six years of age, or who have been previously enrolled in first grade, and who have not yet reached their 19th birthday shall attend school for the entire period the program is offered, unless exempted as indicated below. On enrollment in prekindergarten or kindergarten, a student shall attend school. *Education Code 25.085(a)-(c)*

Voluntary Enrollment of Students 19 and Over

A person who voluntarily enrolls in school or voluntarily attends school after the person's 19th birthday shall attend school each school day for the entire period the program of instruction is offered. A board may adopt a policy requiring the student who is under 21 years of age to attend school until the end of the school year.

After the third unexcused absence of a person who voluntarily enrolls, a district shall issue a warning letter to the person that states the person's enrollment may be revoked for the remainder of the school year if the person has more than five unexcused absences in a semester.

A district may revoke for the remainder of the school year the enrollment of a person who has more than five unexcused absences in a semester, except a school district may not revoke the enrollment of a person under this provision on a day on which the person is physically present at school.

A person whose enrollment is revoked for exceeding this limit may be considered an unauthorized person on school grounds for the purposes of Education Code 37.107 regarding trespassing.

As an alternative to revoking a person's enrollment, a school district may impose a behavior improvement plan described by Education Code 25.0915(a-1)(1).

Education Code 25.085(e)-(h)

Accelerated, Intervention, and Compensatory Programs

Unless specifically exempted, a student must also attend:

1. An extended-year program for which the student is eligible that is provided by a district for students identified as likely not to be promoted to the next grade level or tutorial classes required by the district under Education Code 29.084 [see EHBC];
2. A reading intervention program to which the student has been assigned under Education Code 28.0064 [see EKC];
3. An accelerated instruction program to which the student is assigned under Education Code 28.0211 [see EIE];

4. A basic skills program to which the student is assigned under Education Code 29.086 [see EHBC]; or

5. A summer program provided:

   a. To a student placed in in-school suspension or other alternative setting, other than a disciplinary alternative education program (DAEP), who has been offered the opportunity to complete before the beginning of the next school year each course in which the student was enrolled at the time of removal. *Education Code 37.021* [See FO]

   b. To a student removed to a DAEP who has been offered an opportunity to complete coursework before the beginning of the next school year. *Education Code 37.008(l)* [See FOCA]

Education Code 25.085(d)

Additional Instructional Days

Notwithstanding any other provision in Education Code 25.085, a student enrolled in a district is not required to attend school for any additional instructional days described by Education Code 48.0051 [See Incentive for Additional Instructional Days at FEB(LEGAL)]. *Education Code 25.085(i)*

Exemptions

A student is exempt from compulsory attendance requirements under the following statutory provisions.

Equivalency Diploma

A student is exempt from compulsory attendance requirements if the student is at least 17 years of age and has been issued a high school equivalency certificate or diploma.

Private or Home School

A student is exempt from compulsory attendance requirements if the student attends a private or parochial school that includes in its course a study of good citizenship.

A student in a home school shall be exempt from compulsory attendance if he or she is pursuing in good faith a curriculum consisting of books, workbooks, other written materials (including those that appear on an electronic screen of either a computer or video tape monitor), or any combination of these. The curriculum shall be designed to meet basic education goals of reading, spelling, grammar, mathematics, and a study of good citizenship. *Tex. Educ. Agency v. Leeper, 893 S.W.2d 432 (Tex. 1994)*

Special Education — Nondistrict Placement

A student is exempt from compulsory attendance requirements if the student is eligible to participate in a district's special education program under Education Code 29.003 and cannot be appropriately served by the resident district.

Medical Condition	A student is exempt from compulsory attendance requirements if the student has a temporary and remediable physical or mental condition that makes attendance infeasible and the student has a certificate from a qualified physician specifying the temporary condition, indicating the prescribed treatment, and covering the anticipated period of absence for the purpose of receiving and recuperating from remedial treatment.
Expulsion — No JJAEP	A student is exempt from compulsory attendance requirements if the student is expelled in accordance with legal requirements in a district that does not participate in a mandatory juvenile justice alternative education program. [See FOD]
17-Year-Old in GED Course	A student is exempt from compulsory attendance requirements if the student is at least 17 years old, is attending a course of instruction to prepare for the high school equivalency examinations, and: 1. Has the permission of the student's parent or guardian to attend the course; 2. Is required by court order to attend the course; 3. Has established a residence separate and apart from the student's parent, guardian, or other person having lawful control of the student; or 4. Is homeless.
High School Replacement Programs	A student is exempt from compulsory attendance requirements if the student is enrolled in the Texas Academy of Leadership in the Humanities, Texas Academy of Mathematics and Science, or Texas Academy of International Studies.
16-Year-Old in GED Program or Job Corps	A student is exempt from compulsory attendance requirements if the student is at least 16 years old and is attending a course of instruction to prepare for the high school equivalency examinations, if: 1. The student is recommended to take the course by a public agency that has supervision or custody of the student under a court order; or 2. The student is enrolled in a Job Corps training program under the Workforce Investment Act of 1998, 29 U.S.C. 2801. [Note: The Workforce Investment Act of 1998 has been repealed.]
Other Exemption	A student is exempt from compulsory attendance requirements if the student is specifically exempted under another law. *Education Code 25.086*

Excused Absences for Compulsory Attendance Determinations

Note: Additional information regarding attendance accounting requirements is found in the Texas Education Agency's (TEA) *Student Attendance and Accounting Handbook*.[1]

A district shall excuse a student from attending school for the following purposes, including travel for those purposes.

1. Observing religious holy days;
2. Attending a required court appearance;
3. Appearing at a governmental office to complete paperwork required in connection with the student's application for United States citizenship.
4. Taking part in a United States naturalization oath ceremony;
5. Serving as an election clerk [see Early Voting Clerks, below]; or
6. If a student is in the conservatorship of the Department of Family and Protective Services (DFPS), participating, as determined and documented by DFPS, in an activity:
    a. Ordered by a court under Family Code Chapter 262 or 263, provided that it is not practicable to schedule the participation outside of school hours, or
    b. Required under a service plan under Family Code Chapter 263, Subchapter B; and
7. Attending a released time course [see FEF].

Education Code 25.087(b)(1)

Religious Holy Days

For purposes of excusing a student from attending school to observe a religious holy day, a district may not require documentation from a clergy member or other religious leader and shall accept a note from the student's parent or person standing in parental relation verifying the purpose of the student's absence. *Education Code 25.087(f)*

Health-Care Appointments

A district shall excuse a student from attending school for a temporary absence resulting from an appointment with a health-care professional, including a mental health professional, for the student or the student's child if the student commences classes or returns to school on the same day of the appointment. "Temporary absence" includes the temporary absence of a student diagnosed with autism spectrum disorder on the day of the student's appointment with a health-care practitioner to receive a generally recognized

service for persons with autism spectrum disorder, including applied behavioral analysis, speech therapy, and occupational therapy. *Education Code 25.087(b)(2)-(b-3)*

Serious or Life-Threatening Illness

A district shall excuse an absence resulting from a serious or life-threatening illness or related treatment that makes the student's attendance infeasible, if the student or the student's parent or guardian provides on a form adopted by the district a certification from a physician licensed to practice medicine in Texas specifying the following information, as determined by the physician:

1. The student's illness;
2. A statement that the illness is serious or life-threatening;
3. The anticipated period of the student's absence relating to the illness or related treatment; and
4. A statement that the illness makes the student's attendance infeasible during the anticipated period of absence.

Education Code 25.087(b)(3)

Each district shall adopt a form for a physician to provide the certification described above for purposes of excusing a student with a serious or life-threatening illness from attending school. The district may not require the student or student's parent to provide more documentation or information than is required by the form. *Education Code 25.087(g)*

Higher Education Visits

A district may excuse a student from attending school to visit an institution of higher education accredited by a generally recognized accrediting organization during the student's junior and senior years of high school for the purpose of determining the student's interest in attending the institution of higher education, provided that:

1. The district may not excuse for this purpose more than two days during the student's junior year and two days during the student's senior year; and
2. The district adopts:
    a. A policy to determine when an absence will be excused for this purpose; and
    b. A procedure to verify the student's visit at the institution of higher education.

Education Code 25.087(b-2)

Early Voting Clerks	A district may adopt a policy excusing a student from attending school for service as a student early voting clerk in an election. A district may excuse a student for serving as an election clerk [see Election Clerks, above] or early voting clerk for a maximum of two days in a school year. *Education Code 25.087(b-1), (e)*
Military Dependents	A district shall excuse a student whose parent, stepparent, or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from, or immediately returned from continuous deployment of at least four months outside the locality where the parent, stepparent, or guardian regularly resides, to visit with the student's parent, stepparent, or guardian. A district may not excuse a student under this provision more than five days in a school year. An excused absence under this provision must be taken not earlier than the 60th day before the date of deployment or not later than the 30th day after the date of return from deployment. *Education Code 25.087(b-4)* [See FDD]
Enlistment in Armed Services	A district shall excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that: 1. The district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and 2. The district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard. A district shall adopt procedures to verify a student's activities as described in these provisions. *Education Code 25.087(b-5), (b-6)*
Visit to a Driver's License Office	A district may excuse a student who is 15 years of age or older from attending school to visit a driver's license office to obtain a driver's license or learner license, provided that the district may not excuse more than one day of school during the period the student is enrolled in high school for each of the following purposes: obtaining a driver's license; or obtaining a learner license. The district must verify the student's visit to the driver's license office in accordance with procedures adopted by the district. *Education 25.087(b-7)*
Career Investigation	A district may excuse a student from attending school for a career investigation day to visit a professional at the professional's workplace during the student's junior and senior years of high school for the purpose of determining the student's interest in pursuing a ca-

reer in the professional's field, provided that the district may not excuse for this purpose more than two days during the student's junior year and two days during the student's senior year. The district must adopt a policy to determine when an absence may be excused for this purpose and a procedure to verify the student's visit at the professional's workplace. *Education 25.087(b-8)*

Taps at Military Funeral

In addition, a district may excuse a student in grades 6 through 12 for the purpose of sounding "Taps" at a military honors funeral held in this state for a deceased veteran. *Education Code 25.087(c)*

No Penalty

A student whose absence is excused for a reason described beginning at Excused Absences for Compulsory Attendance Determinations, above, may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the district.

Make-Up Work

The student shall be allowed a reasonable time to make up schoolwork missed on the days described above. If the student satisfactorily completes the work, the days of absence shall be counted as days of compulsory attendance.

Education Code 25.087(d)

Other Excused Absences

A person required to attend school may be excused for temporary absence resulting from any cause acceptable to the teacher, principal, or superintendent of the school in which the person is enrolled. *Education Code 25.087(a)*

Notices to Parents

Warning Notice

A district shall notify a student's parent in writing at the beginning of the school year that, if the student is absent from school on 10 or more days or parts of days within a six-month period in the same school year, the student's parent is subject to prosecution under Education Code 25.093, and the student is subject to referral to a truancy court for truant conduct under Family Code 65.003(a).

Notice of Absences

A district shall notify a student's parent if the student has been absent from school, without excuse under Education Code 25.087, on three days or parts of days within a four-week period. The notice must:

1. Inform the parent that:
    a. It is the parent's duty to monitor the student's school attendance and require the student to attend school;
    b. The student is subject to truancy prevention measures under Education Code 25.0915; and
2. Request a conference between school officials and the parent to discuss the absences.

The fact that a parent did not receive the notices described above is not a defense for the parent's failure to require a child to attend school nor for the student's failure to attend school.

Education Code 25.095

Non-Attendance

Parent Liability

A parent or person standing in parental relation commits an offense if:

1. A warning notice is issued;
2. The parent with criminal negligence fails to require the child to attend school as required by law; and
3. The child has absences for the amount of time specified under Family Code 65.003(a).

The attendance officer [see FED] or other appropriate school official shall file a complaint against the parent in an appropriate court, as permitted under Education Code 25.093.

Affirmative Defense — Parent

It is an affirmative defense to prosecution that one or more of the absences required to be proven was excused by a school official or should be excused by the court. A decision by the court to excuse an absence for this purpose does not affect the ability of a district to determine whether to excuse the absence for another purpose.

Education Code 25.093

Student Liability

A child engages in truant conduct if the child is required to attend school under the compulsory attendance laws, and fails to attend school on 10 or more days or parts of days within a six-month period in the same school year. Truant conduct may be prosecuted only as a civil case in a truancy court. *Family Code 65.003(a)-(b)*

"Child" means a person who is 12 years of age or older and younger than 19 years of age. *Family Code 65.002(1)*

Truancy Courts

The following are designated as truancy courts:

1. The constitutional county court in a county with a population of 2.1 million or more;
2. Justice courts; and
3. Municipal courts.

A truancy court has exclusive original jurisdiction over cases involving allegations of truant conduct.

Family Code 65.004(a)-(b)

Affirmative Defense — Student

It is an affirmative defense to an allegation of truant conduct that one or more of the absences required to be proven:

1. Have been excused by a school official or by the court;
2. Were involuntary; or
3. Were due to the child's voluntary absence from the child's home because of abuse, as defined by Family Code 261.001.

The affirmative defense is not available if, after deducting the absences described above, there remains a sufficient number of absences to constitute truant conduct.

In asserting an affirmative defense, the burden is on the child to show by a preponderance of the evidence that the absence has been or should be excused, was involuntary, or was due to the child's voluntary absence from the child's home because of abuse, as defined by Family Code 261.001.

A decision by the court to excuse an absence does not affect the ability of the district to determine whether to excuse the absence for another purpose.

Family Code 65.003(c)-(f)

Truancy Prevention Measures

If a student fails to attend school without excuse on three or more days or parts of days within a four-week period but does not fail to attend school for the time described below, the district shall initiate truancy prevention measures on the student. [See FED] *Education Code 25.0915(a-4)*

District Complaint or Referral

If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a district shall within 10 school days of the student's 10th absence refer the student to a truancy court for truant conduct under Family Code 65.003(a). [See FED] *Education Code 25.0951(a)*

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[1] TEA *Student Attendance Accounting Handbook*: https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook

Note: Additional information regarding attendance accounting requirements is found in the Texas Education Agency's (TEA) *Student Attendance and Accounting Handbook*.[1]

Uniform Accounting System

Each district shall use a uniform accounting system adopted by the commissioner for the data required to be reported for the Public Education Information Management System. *Education Code 48.008(b)*

Student Attendance Accounting Handbook

The commissioner will annually establish student attendance accounting guidelines and procedures to be used by a district to maintain records and make reports on student attendance and student participation in special programs.

The standard procedures that a district must use to maintain records and make reports on student attendance and student participation in special programs are described in the official TEA publication *Student Attendance Accounting Handbook.* A copy of the *Student Attendance Accounting Handbook* is available on the TEA website with information related to financial compliance.

Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

19 TAC 129.1025

Incentive for Additional Instructional Days

The commissioner shall adjust the average daily attendance of a district under Education Code 48.005 in the manner provided by Education Code 48.0051(b) if the district:

1. Provides the minimum number of minutes of operational and instructional time required under Education Code 25.081 and commissioner rules adopted under that section over at least 180 days of instruction; and

2. Offers an additional 30 days of half-day instruction for students enrolled in prekindergarten through fifth grade.

Education Code 48.0051(a)

Funding for Off-Campus Programs

Funding eligibility for a student participating in an off-campus program will include time instructed in the off-campus program. A campus may choose an alternate attendance-taking time for a group of students that is scheduled to be off-campus during the regular attendance-taking time. The alternate attendance-taking time will be in effect for the period of days or weeks for which the group is scheduled to be off-campus during the regular attendance-taking time (for example, for the semester or for the duration

of employment). This alternate attendance-taking time may not be changed once it is selected for a particular group of students. If attendance is taken at an off-campus location, the district must ensure that attendance is taken in accordance with the *Student Attendance Accounting Handbook*.

For a district to receive FSP funding for a student participating in an off-campus program, the district must have documentation of an agreement between the district and the college.

19 TAC 129.1031(c)-(d) [See EHDD]

[For information regarding funding for courses taken with the Texas Virtual School Network, see EHDE.]

Disasters

The commissioner may adjust the average daily attendance of a district all or part of which is located in an area declared a disaster area by the governor under Government Code Chapter 418 if the district experiences a decline in average daily attendance that is reasonably attributable to the impact of the disaster.

The commissioner may make the adjustment under this section for the two-year period following the date of the governor's initial proclamation or executive order declaring the state of disaster.

Education Code 48.006(a), (c)

Emergency or Crisis

In a school year in which the occurrence of an emergency or crisis, as defined by commissioner rule, causes a statewide decrease in average daily attendance of school districts entitled to funding under the Foundation School Program or, for an emergency or crisis occurring only within a specific region of Texas, causes a regional decrease in the average daily attendance of school districts located in the affected region, the commissioner shall modify or waive requirements applicable to the affected districts for average daily attendance under Education Code 48.005 and adopt appropriate safeguards as necessary to ensure the continued support and maintenance of an efficient system of public free schools and the continued delivery of high-quality instruction under that system. *Education Code 48.005(e-1)*

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[1] TEA *Student Attendance Accounting Handbook*: https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook

District Complaint or Referral

Against Student

If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a district shall within 10 school days of the student's 10th absence refer the student to a truancy court for truant conduct under Family Code 65.003(a). [See FEA]

Against Parent

The district may file a complaint against the student's parent in a county, justice, or municipal court for an offense of parent contributing to nonattendance under Education Code 25.093 if the district provides evidence of the parent's criminal negligence.

A court shall dismiss a complaint made by a district against a parent that does not comply with Education Code 25.0951; does not allege the elements required for the offense; is not timely filed, unless the district delayed the referral as provided below; or is otherwise substantively defective.

Delaying a Referral

A district may delay a referral of a student for truant conduct, or may choose to not refer a student for truant conduct, if the district:

1. Is applying truancy prevention measures to the student under Education Code 25.0915; and
2. Determines that the truancy prevention measures are succeeding and it is in the best interest of the student that a referral be delayed or not be made.

Education Code 25.0951

Referral Prohibited

A district may not refer a student to truancy court if the school determines that the student's truancy is the result of pregnancy, being in the state foster program, homelessness, severe or life-threatening illness or related treatment, or being the principal income earner for the student's family. [See Truancy Prevention Measures, below] *Education Code 25.0915(a-3)*

Filing Requirements

Each referral to truancy court for conduct described by Family Code 65.003(a) must:

1. Be accompanied by a statement from the student's school certifying that the school applied the truancy prevention measures to the student, and the measures failed to meaningfully address the student's school attendance; and
2. Specify whether the student is eligible for or receives special education services under Education Code Chapter 29, Subchapter A.

A truancy court shall dismiss a petition filed by a truant conduct prosecutor under Family Code 65.054, if the court determines that the district's referral:

1. Does not comply with the requirement above;
2. Does not satisfy the elements required for truant conduct;
3. Is not timely filed, unless the school district delayed the referral as provided above [see Delaying a Referral, above]; or
4. Is otherwise substantively defective.

Education Code 25.0915(b), (c)

Expunction of Records

An individual who was convicted of a truancy offense under former Education Code 25.094 or has had a complaint for a truancy offense dismissed is entitled to have the conviction or complaint and records relating to the conviction or complaint expunged.

Regardless of whether the individual has filed a petition for expunction, the court in which the individual was convicted or a complaint for a truancy offense was filed shall order the conviction, complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a district or law enforcement agency, to be expunged from the individual's record. After entry of the order, the individual is released from all disabilities resulting from the conviction or complaint, and the conviction or complaint may not be shown or made known for any purpose.

Code of Criminal Procedure 45A.464

Attendance Officer

A board may select a school attendance officer. A school attendance officer also may be selected by two or more boards to serve their districts jointly. *Education Code 25.088*

In districts where no attendance officer has been selected, the superintendent and the peace officers in a district shall perform the duties of attendance officer, but no additional compensation shall be paid for the services. *Education Code 25.090* [See Peace Officers, below]

Powers and Duties

An attendance officer employed by a district who is not commissioned as a peace officer has the following powers and duties with respect to enforcement of compulsory school attendance requirements:

1. To investigate each case of a violation of the compulsory school attendance requirements referred to the attendance officer;
2. To enforce compulsory school attendance requirements by applying truancy prevention measures adopted under Educa-

tion Code 25.0915 to the student and if the measures fail to meaningfully address the student's conduct:

a. Referring the student to a truancy court if the student has unexcused absences for the amount of time specified under Family Code 65.003(a); and

b. Filing a complaint in a county, justice, or municipal court against a parent who violates Education Code 25.093;

3. To monitor school attendance compliance by each student investigated by the officer;

4. To maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board, or the commissioner, to provide a record to the individual or entity requesting the record;

5. To make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that the attendance officer may not enter a residence without permission of the parent or of the owner or tenant of the residence; and

6. At the request of a parent, to escort a student from any location to a school campus to ensure the student's compliance with compulsory school attendance requirements.

Education Code 25.091(b)

Peace Officers

A peace officer serving as an attendance officer has the following powers and duties concerning enforcement of compulsory school attendance requirements:

1. To investigate each case of a violation of compulsory school attendance requirements referred to the peace officer;

2. To enforce compulsory school attendance requirements by applying truancy prevention measures adopted under Education Code 25.0915 to the student and if the measures fail to meaningfully address the student's conduct:

a. Referring the student to a truancy court if the student has unexcused absences for the amount of time specified under Family Code 65.003(a); or

b. Filing a complaint in a county, justice, or municipal court against a parent who violates Education Code 25.093;

3. To serve court-ordered legal process;

4. To review school attendance records for compliance by each student investigated by the officer;

5. To maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board, or the Commissioner, to provide a record to the individual or entity requesting the record; and

6. To make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer may not enter a residence without the permission of the parent of a student required to attend school or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent.

A peace officer who has probable cause to believe that a child is in violation of the compulsory attendance law may take the child into custody for the purpose of returning the child to the school campus of the child to ensure the child's compliance with compulsory attendance requirements.

Education Code 25.091(a), (b-1)

Truancy Prevention Measures

A district shall adopt truancy prevention measures designed to address student conduct related to truancy in the school setting before the student engages in conduct described by Family Code 65.003 and minimize the need for referrals to truancy court for conduct described by Family Code 65.003(a). *Education Code 25.0915(a)*

A district shall take one or more of the following actions as a truancy prevention measure:

1. Impose:

    a. A behavior improvement plan on the student that must be signed by an employee of the school, that the district has made a good faith effort to have signed by the student and the student's parent or guardian, and that includes:

        (1) A specific description of the behavior that is required or prohibited for the student;

        (2) The period for which the plan will be effective, not to exceed 45 school days after the date the contract becomes effective; or

(3) The penalties for additional absences, including additional disciplinary action or the referral of the student to a truancy court; or

b. School-based community service; or

2. Refer the student to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy. A referral may include participation by the child's parent or guardian if necessary.

A school district shall offer additional counseling to a student and may not refer the student to truancy court if the school determines that the student's truancy is the result of:

1. Pregnancy;

2. Being in the state foster program;

3. Homelessness;

4. Severe or life-threatening illness or related treatment; or

5. Being the principal income earner for the student's family.

If a student fails to attend school without excuse on three or more days or parts of days within a four-week period but does not fail to attend school for the time described by Education Code 25.0951(a), the district shall initiate truancy prevention measures on the student.

Education Code 25.0915

Minimum Standards

The minimum standards for the truancy prevention measures implemented by a district under Education Code 25.0915 include:

1. Identifying the root cause of the student's unexcused absences and actions to address each cause;

2. Maintaining ongoing communication with students and parents on the actions to be taken to improve attendance;

3. Establishing reasonable timelines for completion of the truancy prevention measure; and

4. Establishing procedures to notify the admission, review, and dismissal committee or the Section 504 committee of attendance issues relating to a student with a disability and ensure that the committee considers whether the student's attendance issues warrant an evaluation, a reevaluation, and/or

modifications to the student's individualized education program or Section 504 plan, as appropriate.

19 TAC 129.1043

Best Practices

A district shall consider the following best practices for truancy prevention measures:

1. Develop an attendance policy that clearly outlines requirements related to truancy in accordance with Education Code, Chapter 25, Subchapter C, and communicate this information to parents at the beginning of the year.
2. Create a culture of attendance that includes training staff to talk with students and parents about the attendance policy and the root causes of unexcused absences.
3. Create incentives for perfect attendance and improved attendance.
4. Educate students and their families on the positive impact of school attendance on performance.
5. Provide opportunities for students and parents to address causes of absence and/or truancy with district staff and link families to relevant community programs and support.
6. Develop collaborative partnerships, including planning, referral, and cross-training opportunities, between appropriate school staff, attendance officers, program-related liaisons, and external partners, such as court representatives, community and faith-based organizations, state or locally funded community programs for truancy intervention or prevention, and law enforcement to assist students.
7. Determine root causes of unexcused absences and review campus- and district-level data on unexcused absences to identify systemic issues that affect attendance.
8. Use existing school programs such as Communities in Schools, 21st Century Community Learning Centers, restorative discipline, and positive behavior interventions and supports (PBIS) to provide students and their parents with services.
9. At the beginning of each school year, conduct a needs assessment and identify and list, or map, services and programs available within the district and the community that a school, a student, or a student's parent or guardian may access to address the student's barriers to attendance and make the infor-

mation available to staff, students, and parents. The information must include, but is not limited to:

a. Services for pregnant and parenting students;

b. Services for students experiencing homelessness;

c. Services for students in foster care;

d. Federal programs including, but not limited to, Title 1, Part A, of the Elementary and Secondary Education Act;

e. State programs including, but not limited to, state compensatory education programs;

f. Dropout prevention programs and programs for “at risk” youth;

g. Programs that occur outside of school time;

h. Counseling services;

i. Tutoring programs and services available at no or low cost;

j. Mental health services;

k. Alcohol and substance abuse prevention and treatment programs;

l. Mentoring programs and services;

m. Juvenile justice services and programs;

n. Child welfare services and programs;

o. Other state or locally funded programs for truancy prevention and intervention; and

p. Other supportive services that are locally available for students and families through faith-based organizations, local governments, and community-based organizations.

10. After identifying and listing, or mapping, services available in the district and community, school districts should target any new resources, programs, or services to gaps in services identified during the needs assessment.

11. School districts should ensure that personnel, including truancy prevention facilitators or juvenile case managers, attendance officers, McKinney-Vento (homeless) liaisons, foster care liaisons, Title IX coordinators, 504 coordinators, pregnancy and parenting coordinators, dropout prevention coordinators, special education staff, and other appropriate student

services personnel, meet to contribute to the needs assessment, discuss opportunities to work together, and identify strategies to coordinate both internally and externally to address students' attendance barriers.

In determining services offered to students identified in Education Code 25.091(a-3), a district shall consider:

1. Offering an optional flexible school day program and evening and online alternatives;
2. Working with businesses that employ students to help students coordinate job and school responsibilities; and
3. Offering before school, after school, and/or Saturday prevention or intervention programs or services that implement best and promising practices.

19 TAC 129.1045

Sanctions

An aggrieved party may file a written complaint with the Texas Education Agency (TEA) regarding an allegation that a district has failed to comply with Education Code 25.0915 or 19 Administrative Code Chapter 129, Subchapter BB related to truancy prevention measures. TEA may request that a district provide documentation regarding its compliance in response to a complaint. If, after a review of this documentation or a district's failure to provide this documentation, TEA determines that the district is not in compliance with required truancy prevention measure provisions, TEA may issue a preliminary report of its findings to the district in accordance with 19 Administrative Code 157.1122 (Notice). A district may request in writing an informal review of TEA's preliminary report in accordance with 19 Administrative Code 157.1123 (Informal Review). Following the informal review, or if no informal review is requested by the deadline, a final report will be issued. The commissioner of education may implement any sanction listed in Education Code 39.102(a) against a district found to be out of compliance with Education Code 25.0915 or 19 Administrative Code Chapter 129, Subchapter BB. *19 TAC 129.1047*

Truancy Prevention Facilitator or Juvenile Case Manager

A district shall employ a truancy prevention facilitator or juvenile case manager to implement the truancy prevention measures required by Education Code 25.0915 and any other effective truancy prevention measures as determined by the district or campus. At least annually, the truancy prevention facilitator shall meet to discuss effective truancy prevention measures with a case manager or other individual designated by a truancy court to provide services to students of the district in truancy cases.

Instead of employing a truancy prevention facilitator, a school district may designate an existing district employee or juvenile case manager to implement the truancy prevention measures and any other effective truancy prevention measures as determined by the district or campus.

Education Code 25.0915(d), (e)

On approval of the board, a district may employ or agree in accordance with Government Code Chapter 791, with any appropriate governmental entity to jointly employ or to jointly contribute to the costs of another entity employing:

1. A case manager to provide services in cases involving juvenile offenders who are before a court consistent with the court's statutory powers or referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardians; or

2. One or more juvenile case managers who shall assist the court in administering the court's juvenile docket and in supervising the court's orders in juvenile cases, and may provide prevention services to a child considered at risk of entering the juvenile justice system, and intervention services to juveniles engaged in misconduct before cases are filed, excluding traffic offenses.

A district that jointly employs a case manager in accordance with Government Code Chapter 791 employs a juvenile case manager for purposes of Code of Criminal Procedure Chapter 102 and Government Code Chapter 102.

Code of Criminal Procedure 45.056(a), (c)

Funding

A district may apply to the criminal justice division of the governor's office for reimbursements of the costs of employing a juvenile case manager. The district may pay the salary and benefits of a juvenile case manager and the costs of training, travel, office supplies, and other necessary expenses relating to the position of the juvenile case manager from the local truancy prevention and diversion fund established under Local Government Code 134.156. *Code of Criminal Procedure 45.056(b)*

Priority

A juvenile case manager employed jointly under Government Code Chapter 791 shall give priority to cases brought under Education Codes 25.093 (parent contributing to nonattendance). *Code of Criminal Procedure 45.056(e)*

Rules

The board of a district that employs a juvenile case manager shall adopt and implement reasonable rules for juvenile case managers that provide a code of ethics, and for the enforcement of the code of ethics; appropriate educational preservice and in-service training standards for juvenile case managers; and training in:

1. The role of the juvenile case manager;
2. Case planning and management;
3. Applicable procedural and substantive law;
4. Courtroom proceedings and presentation;
5. Services to at-risk youth under Family Code Chapter 264, Subchapter D;
6. Local programs and services for juveniles and methods by which juveniles may access those programs and services; and
7. Detecting and preventing abuse, exploitation, and neglect of juveniles.
8. The juvenile case manager shall timely report to the judge who signed the order or judgment and, on request, to the judge assigned to the case or the presiding judge any information or recommendations relevant to assisting the judge in making decisions that are in the best interest of the child.

Code of Criminal Procedure 45.056(f)-(i)

Parent Contributing Agreement

A parent against whom a complaint for parent contributing to nonattendance under Education Code 25.093 has been filed and the district at which the parent's child is enrolled may enter into a written agreement requiring the parent to complete counseling, training, or another program as designated by the district.

A parent who fulfills the terms of an agreement not later than the 30th day after the date on which the complaint was filed or within the period provided by the agreement is entitled to dismissal of the complaint in accordance with Code of Criminal Procedure article 45.0531(b). *Education Code 25.094*

Released Time Course

A district shall excuse a student from attending school to attend a released time course for at least one but not more than five hours a week on request of the student's parent and in accordance with the district's policy.

A released time course is a course in religious instruction offered by a private entity.

Policy

Each district shall adopt a policy for excusing a student enrolled at the district from attending school to attend a released time course.

Requirements

The district's policy must require:

1. Parental written consent for the student to attend the released time course;
2. The private entity offering the released time course to maintain attendance records and make the records available to the district;
3. The private entity, parent, or student to assume responsibility for transportation, including transportation for a student with a disability, to and from any location at which the released time course is offered;
4. The private entity to make provisions for and assume liability for the student enrolled in the released time course while the student is under the private entity's care; and
5. The student to assume responsibility for any schoolwork issued during the student's absence.

Prohibitions

The district's policy must prohibit:

1. The district from using district funds, excluding de minimis costs, to facilitate the provision of a released time course; and
2. The private entity from offering the released time course on district property, unless permitted under a neutral policy of equal access that allows community organizations to use district property.

The district's policy may not interfere with the ability of the student's parent to request or access a released time course for the student.

Education Code 25.0875

Release from School

A student shall not be released from school at times other than regular dismissal hours except with the permission of the principal of the school. The teacher shall determine that such permission has been granted before allowing the student to leave.

Exception for Released Time Course

For purposes of this policy, a “released time course” shall have the same definition as provided in law.

A student shall be permitted to attend a released time course in accordance with the following requirements:

1. The parent or guardian has provided written consent for the student to attend the released time course;
2. The private entity offering the released time course maintains attendance records and will make those records available to the District;
3. The private entity, parent or guardian, or student assumes responsibility for transportation, including transportation for a student with a disability, to and from the location at which the released course is offered;
4. The private entity assumes liability for the student enrolled in the released time course while the student is under the private entity’s care; and
5. The student is responsible for any school work and assignments issued during the student’s absence from the District.

The District shall be prohibited from using District funds, excluding de minimis costs, to facilitate the student attending a released time course.

A private entity shall be prohibited from offering the released time course on District property unless the use is in accordance with policy GKD.

The District shall not interfere with a parent’s or guardian’s ability to request or access a released time course for the student.

Wellness Policy

Each district must establish a local school wellness policy for all schools participating in the National School Lunch Program and/or School Breakfast program under the jurisdiction of the district. The local school wellness policy is a written plan that includes methods to promote student wellness, prevent and reduce childhood obesity, and provide assurance that school meals and other food and beverages sold and otherwise made available on the school campus during the school day are consistent with applicable minimum federal standards. *7 C.F.R. 210.31(a)*

School Day

"School day" means the period from the midnight before, to 30 minutes after the end of the official school day. *7 C.F.R. 210.11(a)(5)*

School Campus

"School campus" means all areas of the property under the jurisdiction of the school that are accessible to students during the school day. *7 C.F.R. 210.11(a)(4)*

Contents

At a minimum, a local school wellness policy must contain:

1. Specific goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness. In developing these goals, a district must review and consider evidence-based strategies and techniques;
2. Standards for all foods and beverages provided, but not sold, to students during the school day on each participating school campus under the jurisdiction of the district;
3. Standards and nutrition guidelines for all foods and beverages sold to students during the school day on each participating school campus under the jurisdiction of the district that:
    a. Are consistent with applicable requirements set forth in 7 C.F.R. 210.10 (meal requirements for lunches and afterschool snacks) and 220.8 (meal requirements for breakfasts);
    b. Are consistent with the nutrition standards set forth under 7 C.F.R. 210.11 (competitive food service and standards);
    c. Permit marketing on the school campus during the school day of only those foods and beverages that meet the nutrition standards under 7 C.F.R. 210.11; and
    d. Promote student health and reduce childhood obesity;
4. Identification of the position of the district or school official(s) responsible for the implementation and oversight of the local school wellness policy to ensure each school's compliance with the policy;

5. A description of the manner in which parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public are provided an opportunity to participate in the development, implementation, and periodic review and update of the local school wellness policy; and

6. A description of the plan for measuring the implementation of the local school wellness policy, and for reporting local school wellness policy content and implementation issues to the public as required below.

Public Involvement and Notification

A district must:

1. Permit parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public to participate in the development, implementation, and periodic review and update of the local school wellness policy.

2. Inform the public about the content and implementation of the local school wellness policy, and make the policy and any updates available to the public annually.

3. Inform the public about progress toward meeting the goals of the local school wellness policy and compliance with the local school wellness policy by making the triennial assessment, as required at item 2 under Implementation Assessments and Updates below, available to the public in an accessible and easily understood manner.

Implementation Assessments and Updates

A district must:

1. Designate one or more district or school officials to ensure that each participating school complies with the local school wellness policy.

2. At least once every three years, assess schools' compliance with the local school wellness policy, and make assessment results available to the public. The assessment must measure the implementation of the local school wellness policy, and include:

    a. The extent to which schools under the jurisdiction of the district are in compliance with the local school wellness policy;

b. The extent to which the district's local school wellness policy compares to model local school wellness policies; and

c. A description of the progress made in attaining the goals of the local school wellness policy.

3. Make appropriate updates or modifications to the local school wellness policy, based on the triennial assessment.

Recordkeeping

A district must retain records to document compliance with the requirements of this policy. These records include, but are not limited to:

1. The written local school wellness policy;

2. Documentation demonstrating compliance with community involvement requirements, including requirements to make the local school wellness policy and triennial assessments available to the public as required at Implementation Assessments and Updates above; and

3. Documentation of the triennial assessment of the local school wellness policy for each school under its jurisdiction.

Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, sec. 204, 124 Stat. 3183 (2010) [42 U.S.C. 1758b]; 7 C.F.R. 210.31(c)–(f)

[See CO for requirements relating to food services management, EHAA for state law requirements relating to health education, and FJ for requirements relating to food and beverage fundraisers.]

Change in Health Services

Before a district or a school may expand or change the health-care services available at a school in the district from those that were available on January 1, 1999, the board must:

1. Hold a public hearing at which the board provides an opportunity for public comment and discloses all information on the proposed health-care services, including:

a. All health-care services to be provided;

b. Whether federal law permits or requires any health-care service provided to be kept confidential from parents;

c. Whether a child's medical records will be accessible to the parent;

d. Information concerning grant funds to be used;

e. The titles of persons who will have access to the medical records of a student; and

f. The security measures that will be used to protect the privacy of students' medical records.

2. Approve the expansion or change by a record vote.

Education Code 38.012

[For information regarding school-based health centers, see FFAE.]

Parental Right to Information

Notification Procedure

The Texas Education Agency (TEA) shall adopt a procedure for school districts to notify the parent of a student enrolled in the district regarding any change in services provided to or monitoring of the student related to the student's mental, emotional, or physical health or well-being.

A school district may not adopt a procedure that:

1. Prohibits a district employee from notifying the parent of a student regarding information about, or a change in services provided to or monitoring of the student related to, the student's mental, emotional, or physical health or well-being;

2. Encourages or has the effect of encouraging a student to withhold from the student's parent information described by item 1; or

3. Prevents a parent from accessing education or health records concerning the parent's child.

These requirements do not require the disclosure of information to a parent if a reasonably prudent person would believe the disclosure is likely to result in the student suffering abuse or neglect, as those terms are defined by Family Code 261.001.

District Employees

A district employee may not discourage or prohibit parental knowledge of or involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

Any student support services training developed or provided by a district to district employees must comply with any student services guidelines, standards, and frameworks established by the State Board of Education and TEA.

Notice of Health-Related Services

Before the first instructional day of each school year, a district shall provide to the parent of each student enrolled in the district written notice of each health-related service offered at the district campus the student attends. The notice must include a statement of the parent's right to withhold consent for or decline a health-related

service. A parent's consent to a health-related service does not waive a requirement discussed above.

Consent for Questionnaire or Form

Before administering a student well-being questionnaire or health screening form to a student enrolled in prekindergarten through 12th grade, the district must provide a copy of the questionnaire or form to the student's parent and obtain the parent's consent, which must be made in writing and returned to the district, to administer the questionnaire or form.

Limitations on Statute

These requirements may not be construed to:

1. Limit or alter the requirements of Education Code 38.004 (child abuse reporting) or Family Code Chapter 261 (investigation of report of child abuse or neglect); or

2. Limit a school district employee's ability to inquire about a student's daily well-being without parental consent.

[For more information about consent to medical treatment, including psychological treatment, see FFAC. For information about consent to counseling and mental health, see FFEA and FFEB.]

Education Code 26.0083(a)-(i)

Consent to Certain Activities

Definitions

"Biometric identifier" means a blood sample, hair sample, skin sample, DNA sample, body scan, retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

"Psychological or psychiatric examination or test" means a method designed to elicit information regarding an attitude, habit, trait, opinion, belief, feeling, or mental disorder or a condition thought to lead to a mental disorder, regardless of the manner in which the method is presented or characterized, including a method that is presented or characterized as a survey, check-in, or screening or is embedded in an academic lesson.

"Psychological or psychiatric treatment" means the planned, systematic use of a method or technique that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group.

Psychological or Psychiatric Examination, Test, or Treatment

An employee or contractor of a school district must obtain parental consent before the employee or contractor may conduct a psychological or psychiatric examination, test, or treatment, unless the examination, test, or treatment is required by:

1. TEA's policy concerning child abuse investigations and reports under Education Code 38.004; or

2. State or federal law regarding requirements for special education.

Biometric Identifiers and Health or Medical Information

An employee or contractor of a school district must obtain parental consent before the employee or contractor may, unless authorized by other law:

1. Collect, use, store, or disclose to any person other than the child's parent a child's biometric identifiers; or
2. Disclose a child's health or medical information to any person other than the child's parent.

Notice

Before the first instructional day of each school year, a school district shall provide to the parent of each student enrolled in the district written notice of any actions the district may take involving the authorized collection, use, or storage of biometric identifiers or health or medical information. The notice must:

1. Include a plain language explanation for the district's collection, use, or storage of the child's information and the district's legal authority to engage in that collection, use, or storage; and
2. Be signed by the parent and returned to the district.

Health-Care Services or Medication

An employee or contractor of a school district must obtain parental consent before the employee or contractor may provide health-care services or medication or conduct a medical procedure.

Consent Requirements

Parental consent required for a parent's child to participate in a psychological or psychiatric examination test or treatment or the collection or use of biometric identifiers or health or medical information as described above must be signed by the parent and returned to the district. A child may not participate in the activity unless the district receives the parent's signed written consent to that activity.

Exception

For the purpose of obtaining written consent to provide health-care services or medication or conduct a medical procedure that is determined by the district to be routine care provided by a person who is authorized by the district to provide physical or mental health-related services, the district may obtain consent at the beginning of the school year or at the time of the child's enrollment in the district. Unless otherwise provided by a child's parent, written consent obtained for this purpose is effective until the end of the school year in which the consent was obtained.

Retention

The district shall retain the written informed consent of a child's parent obtained as part of the child's education records.

Limitations on Statute

Nothing in this section may be construed to:

1. Require an employee or contractor of a district to obtain the written consent of a child's parent before verbally asking the child about the child's general well-being; or
2. Affect the duty to report child abuse or neglect under Family Code Chapter 261 or an investigation of a report of abuse or neglect under that chapter.

Education Code 26.009(a), (a-1), (a-2), (a-3), (c), (e), (f)

Table of Contents

Consent to Medical Treatment 3
Form of Consent 3
Minor's Consent to Treatment 3
Telehealth in Medicaid Covered Services 4
Administering Medication 4
Immunity 4
Nonprescription Medication 4
By Volunteer Professionals 5
Rules Applicable to Nurses 5
Self-Administration of Asthma or Anaphylaxis Medicine 5
No Waiver of Immunity 6
Sunscreen Products 6
Dietary Supplements 6
Prescription Medication and Special Education Students 6
Low-THC Cannabis 7
Concussions 7
Concussion Response Policy 7
Academic Accommodations 8
Dextromethorphan (Certain Cold Medication) 8
Maintenance and Administration of Opioid Antagonists 8
Definitions 9
Maintenance 9
Prescription 9
Standing Order 10
Storage of Medication 10
Disposal 10
Reporting Requirement 10
Records Retention 11
Training 11
Gifts, Grants, and Donations 12
Immunity 12
Maintenance and Administration of Epinephrine Delivery Systems 12
Definitions 13

Prompt Notification....13
Records....14
Reports....14
Assignment of Trained Individuals....15
Signed Statement....15
Training....15
Standing Orders....16
Epinephrine Coordinator....16
Notice to Parents....17
Storage....17
Replacement....17
Disposal....17
Gifts, Grants, and Donations....17
Maintenance and Administration of Medication for Respiratory Distress....18
Definitions....18
Each Campus During Regular School Hours....19
Medication Inventory....19
Designated Campus Administrator....20
Notification Procedures....20
Referral Required....20
Storage....21
Disposal....21
Records Retention....21
Training....21
Reporting Requirement....22
No Negative Fiscal Impact....23
Standing Order....23
Notice to Parents....23
Vendor Contracts....23
Refusal to Administer....23
Immunity from Liability....24

Consent to Medical Treatment

The school in which a minor student is enrolled may consent to medical, dental, psychological, and surgical treatment of that student, provided all of the following conditions are met:

1. The person having the power to consent as otherwise provided by law cannot be contacted.
2. Actual notice to the contrary has not been given by that person.
3. Written authorization to consent has been received from that person.

Family Code 32.001(a)(4)

Form of Consent

Consent to medical treatment under this policy shall be in writing, signed by the school official giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment. The consent must contain:

1. The name of the student.
2. The name of one or both parents, if known, and the name of the managing conservator or guardian of the student, if either has been appointed.
3. The name of the person giving consent and the person's relation to the student.
4. A statement of the nature of the medical treatment to be given.
5. The date on which the treatment is to begin.

Family Code 32.002

Minor's Consent to Treatment

A minor may consent to medical, dental, psychological, and surgical treatment furnished by a licensed physician or dentist if the minor:

1. Is 16 years of age and residing separate and apart from the minor's parents, managing conservator, or guardian, with or without the consent of the parents, conservator, or guardian and regardless of the duration of the residence, and is managing his or her own financial affairs, regardless of the source of the income;
2. Consents to the diagnosis and treatment of any infectious, contagious, or communicable disease required to be reported to the Texas Department of State Health Services (DSHS), including all reportable diseases under Health and Safety Code 81.041;

3. Is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy; or

4. Consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use.

Family Code 32.003; Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52 (1976); Bellotti v. Baird, 443 U.S. 622 (1979)

Telehealth in Medicaid Covered Services

Telemedicine medical services and telehealth services authorized as Texas Medicaid covered services must meet the conditions specified in 1 Administrative Code 354.1432(5). *1 TAC 354.1432(5)*

Administering Medication

Immunity

Upon adoption of policies concerning the administration of medication to students by district employees, the district, its board, and its employees are immune from civil liability and administrative disciplinary action for damages or injuries resulting from the administration of medication to a student if:

1. The district has received a written request to administer the medication from the parent, legal guardian, or other person having legal control of the student; and

2. When administering prescription medication, the medication is administered either:

   a. From a container that appears to be the original container and to be properly labeled; or

   b. From a properly labeled unit dosage container filled by a registered nurse or another qualified district employee, as determined by district policy, from a container that appears to be the original container and to be properly labeled.

Nonprescription Medication

A policy adopted concerning the administration of medication to students by district employees may permit a district employee, including a nurse, to administer nonprescription medication to a student without further authorization or written protocol from the student's health-care provider if:

1. The district has received a written request to administer the medication from the parent, legal guardian, or other person having legal control of the student;

2. The medication is unexpired and administered from a container that appears to be the original container and properly labeled; and

3. The dose administered is consistent with the instructions on the container's label.

By Volunteer Professionals

If a district provides liability insurance for a licensed physician or registered nurse who provides volunteer services to the district, a board may allow the physician or nurse to administer to any student nonprescription medication or medication currently prescribed for the student by the student's health-care provider.

Education Code 22.052(a)-(b)

Rules Applicable to Nurses

The Texas Board of Nursing may not adopt or enforce a rule in conflict with Education Code 22.052. *Occupations Code 301.151*

[See DG regarding protection of nurses for refusal to perform acts.]

Self-Administration of Asthma or Anaphylaxis Medicine

A student with asthma or anaphylaxis may possess and self-administer prescription asthma or anaphylaxis medicine while on school property or at a school-related event or activity if:

1. The medicine has been prescribed for that student as indicated by the prescription label on the medicine;
2. The student has demonstrated to the student's physician or other licensed health-care provider and the school nurse, if available, the skill level necessary to self-administer the prescription medication, including the use of any device required to administer the medication;
3. The self-administration is done in compliance with the prescription or written instructions from the student's physician or other licensed health-care provider; and
4. A parent of the student provides to the school:
    a. Written authorization, signed by the parent, for the student to self-administer the prescription medicine while on school property or at a school-related event or activity; and
    b. A written statement, signed by the student's physician or other licensed health-care provider, that states:
        (1) That the student has asthma or anaphylaxis and is capable of self-administering the medicine;
        (2) The name and purpose of the medicine;
        (3) The prescribed dosage for the medicine;
        (4) The times at which or circumstances under which the medicine may be administered; and

(5) The period for which the medicine is prescribed.

The physician's statement must be kept on file in the school nurse's office, or, if there is no school nurse, in the office of the principal of the school the student attends.

[See FFAF for care of students with diagnosed food allergies at risk for anaphylaxis.]

No Waiver of Immunity

The provisions above neither waive any liability or immunity nor create any liability for or a cause of action against a district, a board, or its employees.

Education Code 38.015

Sunscreen Products

A student may possess and use a topical sunscreen product while on school property or at a school-related event or activity to avoid overexposure to the sun and not for the medical treatment of an injury or illness if the product is approved by the federal Food and Drug Administration for over-the-counter use. This provision does not waive any immunity from liability of a district, its board, or its employees; or create any liability for or a cause of action against a district, its board, or its employees. *Education Code 38.021*

Dietary Supplements

A district employee commits a Class C misdemeanor offense if the employee:

1. Knowingly sells, markets, or distributes a dietary supplement that contains performance enhancing compounds to a primary or secondary education student with whom the employee has contact as part of the employee's school district duties; or

2. Knowingly endorses or suggests the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance enhancing compounds by a primary or secondary education student with whom the employee has contact as part of the employee's school district duties.

Education Code 38.011(a), (c)

Prescription Medication and Special Education Students

An employee of a district is prohibited from requiring a child to obtain a prescription for a substance covered under the federal Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation for special education, or receiving special education and related services.

An employee is not prohibited from consulting or sharing classroom-based observations with parents regarding a student's academic and functional performance, behavior in the classroom or

school, or the need for evaluation for special education or related services.

20 U.S.C. 1412(a)(25)

[See FFEB for information regarding psychotropic drugs and psychiatric evaluations]

Low-THC Cannabis

A district may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, production, storage, dispensing, or possession of low-THC cannabis, as authorized by the Texas Compassionate-Use Act. *Health and Safety Code 487.201*

Concussions

Concussion Response Policy

A school district shall adopt and implement a policy regarding how to respond to a concussion believed to have been sustained by a student while on school property or participating in a school-sponsored or school-related activity on or off school property.

Definition

For purposes of this policy, “concussion” means a complex pathophysiological process affecting the brain caused by a traumatic physical force or impact to the head or body, which may:

1. Include temporary or prolonged altered brain function resulting in physical, cognitive, or emotional symptoms or altered sleep patterns; and

2. Involve loss of consciousness.

Application

This section does not apply to a concussion believed to have been sustained by a student while participating in an interscholastic athletic activity. [See FM for requirements related to a concussion sustained during an interscholastic activity.]

Requirements

A district’s concussion response policy must provide for:

1. The immediate removal of a student from a school-sponsored or school-related activity if a school district employee or volunteer believes the student might have sustained a concussion;

2. Notice to the student's parent or guardian or another person with legal authority to make medical decisions for the student of the student's suspected concussion and removal; and

3. The student's return to a school-sponsored or school-related activity following the student’s removal for a suspected concussion only after the requirements under Education Code 38.157(a) have been satisfied. [See FM for the applicable requirements regarding return to play.]

Education Code 38.171-.173

Academic Accommodations

The Texas Education Agency (TEA) shall develop a list of nonmedical academic accommodations a school district may offer to a student diagnosed with a concussion or other brain injury.

TEA shall develop a form for use by school districts describing the accommodations a district may offer and make the form available on TEA's website for use by districts, district educators or administrators, students, and parents or guardians.

A school district that provides accommodations under Education Code 38.0051 must make the form described above available to:

1. A district employee as soon as practicable after receiving notice that a student enrolled in the district has been diagnosed with a concussion or other brain injury or a request from the employee; and

2. A student enrolled in the district or the student's parent or guardian as soon as practicable after receiving notice that the student has been diagnosed with a concussion or other brain injury or a request from the student or parent or guardian.

Education Code 38.0051 may not be construed to require a district to provide any accommodations under that section.

Education Code 38.0051

Dextromethorphan (Certain Cold Medication)

A district may not adopt or enforce an ordinance, order, rule, regulation, or policy that governs the sale, distribution, or possession of dextromethorphan. *Health and Safety Code 488.005*

Maintenance and Administration of Opioid Antagonists

Each district shall adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus in the district that serves students in grades 6 through 12 and may adopt and implement such a policy at each campus in the district, including campuses serving students in a grade level below grade 6.

The policy adopted must:

1. Provide that school personnel and school volunteers who are authorized and trained may administer an opioid antagonist to a person who is reasonably believed to be experiencing an opioid-related drug overdose;

2. Require that each school campus subject to a policy adopted under this provision have one or more school personnel members or school volunteers authorized and trained to administer an opioid antagonist present during regular school hours;

3. Establish the number of opioid antagonists that must be available at each campus at any given time; and

4. Require that the supply of opioid antagonists at each school campus subject to a policy adopted under this provision must be stored in a secure location and be easily accessible to school personnel and school volunteers authorized and trained to administer an opioid antagonist.

Education Code 38.222(a), (c); 25 TAC 40.84(b)-(c); 19 TAC 103.1103

Definitions

“Authorized health-care provider” means a physician, as defined in Education Code 38.201, or person who has been delegated prescriptive authority by a physician under Occupations Code Chapter 157.

“Campus” means a unit of a district that has an assigned administrator, has enrolled students who are counted for average daily attendance, has assigned instructional staff, provides instructional services to students, has one or more grades in the range from early childhood education through grade 12 or is ungraded, and complies with relevant Texas laws.

“Opioid antagonist” as defined in Health and Safety Code 483.101, means any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors.

“Opioid-related drug overdose” as defined in Health and Safety Code 483.101, means a condition, evidenced by symptoms of extreme physical illness, decreased level of consciousness, constriction of the pupils, respiratory depression, or coma, that a layperson would reasonably believe to be the result of the consumption or use of an opioid.

25 TAC 40.82(2)-(3), (5)-(6)

Maintenance

Once a district adopts an opioid antagonist medication policy, a campus implementing an opioid policy must stock opioid antagonist medication.

Prescription

A campus must obtain a prescription from a physician or a person who has been delegated prescriptive authority to stock, possess, and maintain the established number of doses of opioid antagonists as determined by a district, on each campus as described in Education Code 38.225 (Prescription of Opioid Antagonists).

The campus must renew this prescription or obtain a new prescription annually.

The number of additional doses may be determined by an individual campus review led by a physician or a person who has been delegated prescriptive authority.

25 TAC 40.85(a)-(b)

Standing Order

A physician or person who has been delegated prescriptive authority under Occupations Code Chapter 157 may prescribe opioid antagonists in the name of a school district. *Education Code 38.225(a); 25 TAC 40.85(c)*

Storage of Medication

The unassigned opioid antagonist medication must be stored in a secure location and be easily accessible, in accordance with the manufacturer's guidelines and local policy of the district.

Disposal

Used, unassigned opioid antagonists are considered infectious waste and must be disposed of according to the school's bloodborne pathogen control policy.

Expired, unassigned opioid antagonists must be disposed of in accordance with the Federal Drug Administration's disposal of unused medications guidelines and local policy of the district.

25 TAC 40.85(d)-(f)

Reporting Requirement

The campus must submit the report no later than the 10th business day after the date a school personnel member or school volunteer administers an opioid antagonist in accordance with the unassigned opioid antagonist medication policy.

The report shall be submitted to the following individuals and entities:

1. The district;
2. The physician or other person who prescribed the opioid antagonist; and
3. The commissioner of DSHS.

Notifications to the commissioner of DSHS must be submitted on the designated electronic form available on DSHS School Health Program website found at dshs.texas.gov.

25 TAC 40.87(b)-(c)

The school shall report the following information:

1. The age of the person who received the administration of the opioid antagonist;

2. Whether the person who received the administration of the opioid antagonist was a student, a school personnel member or school volunteer, or a visitor;

3. The physical location where the opioid antagonist was administered;

4. The number of doses of opioid antagonist administered;

5. The title of the person who administered the opioid antagonist; and

6. Any other information required by the commissioner of education.

Education Code 38.223(b)

Records Retention

Records relating to implementing and administering the district unassigned opioid antagonist medication policy must be retained per the campus record retention schedule. *25 TAC 40.87(a)*

Training

A district that adopts an opioid antagonist policy is responsible for training school personnel and school volunteers in the administration of an opioid antagonist. *Education Code 38.224(a)*

Training must include information on:

1. Recognizing the signs and symptoms of an opioid-related drug overdose;

2. Responding to an opioid-related drug overdose and administering an opioid antagonist;

3. Implementing emergency procedures, after administering an opioid antagonist;

4. Understanding the medical purpose and misuse of opioids; and

5. Properly disposing of used or expired opioid antagonists.

Training must:

1. Be provided annually in a formal training session or through online education, including practicing the administration of an opioid antagonist with an opioid antagonist trainer device; and

2. Be provided in accordance with the policy adopted under Education Code 21.4515.

Each campus must maintain training records and must make available upon request a list of school personnel and school volunteers

who are trained and authorized to administer the unassigned opioid antagonist medication on the campus.

25 TAC 40.86(b)-(c)

Gifts, Grants, and Donations

A district may accept gifts, grants, donations, and federal and local funds to implement these provisions. *Education Code 38.226*

Immunity

A person who in good faith takes, or fails to take, any action under Education Code Chapter 38, Subchapter E-1 is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act as described by Education Code 38.227. *Education Code 38.227*

Maintenance and Administration of Epinephrine Delivery Systems

Note: The following provisions apply only to a district that adopts an unassigned epinephrine delivery system policy.

A district may adopt and implement a policy regarding the maintenance, administration, and disposal of epinephrine delivery systems at each campus in the district.

If a policy is adopted, the policy:

1. Must provide that school personnel and school volunteers who are authorized and trained may administer an epinephrine delivery system to a person who is reasonably believed to be experiencing anaphylaxis on a school campus; and

2. May provide that school personnel and school volunteers who are authorized and trained may administer an epinephrine delivery system to a person who is reasonably believed to be experiencing anaphylaxis at an off-campus school event or while in transit to or from a school event.

A district that adopts a policy must require that each campus have one or more school personnel members or school volunteers authorized and trained to administer an epinephrine delivery system present during all hours the campus is open. The supply of epinephrine delivery systems at each campus must be stored in a secure location and be easily accessible to school personnel and school volunteers authorized and trained to administer an epinephrine delivery system.

Education Code 38.208

A district that chooses to adopt and implement a written unassigned epinephrine delivery system policy under Education Code Chapter 38, Subchapter E is not required to create an additional policy for care of certain students at risk for anaphylaxis under Ed-

ucation Code 38.0151 [see FFAF]. *Education Code 38.0151(f); 25 TAC 40.62(c)*

A district may develop, as part of the policy, provisions for additional doses to be stocked and utilized at off-campus school events, or in transit to or from school events. *Education Code 38.208(b); 25 TAC 40.65(a)(2)*

Definitions

Epinephrine Delivery System

“Epinephrine delivery system" means a medical delivery device approved by the United States Food and Drug Administration that delivers a dose of epinephrine intended for use to treat anaphylaxis, including:

1. An epinephrine auto-injector; and

2. An epinephrine nasal spray.

Education Code 38.201

All Hours the Campus Is Open

“All hours the campus is open” is defined as, at a minimum, during regular on-campus school hours, and when school personnel are physically on site for school-sponsored activities.

Campus

A “campus” is defined as a unit of a school district that has an assigned administrator, has enrolled students who are counted for average daily attendance, has assigned instructional staff, provides instructional services to students, has one or more grades in the range from early childhood education through grade 12 or is ungraded, and complies with relevant Texas laws.

Unassigned Epinephrine Delivery System

An “unassigned epinephrine delivery system” is an epinephrine delivery system prescribed by an authorized health-care provider in the name of the school issued with a non-patient-specific standing delegation order for the administration of an epinephrine delivery system, issued by a physician or person who has been delegated prescriptive authority under Occupations Code Chapter 157.

25 TAC 40.63(1), (4), (11)

Prompt Notification

Local emergency medical services must be promptly notified by the school when an individual is suspected of experiencing anaphylaxis and when an epinephrine delivery system is administered. If the trained school personnel or school volunteer is the only individual available to notify emergency medical services, the trained individual should administer the unassigned epinephrine delivery system before notifying emergency medical services.

The parent, legal guardian, or emergency contact must be promptly notified by the school when an unassigned epinephrine

delivery system is utilized on their child as soon as is feasible during the emergency response to suspected anaphylaxis.

25 TAC 40.65(e)-(f)

Records

School records of the administration of the unassigned epinephrine delivery system and suspected anaphylaxis must be provided to the parent or guardian of the recipient upon request.

Records relating to implementation and administration of the school's unassigned epinephrine delivery system policy shall be retained per the record retention schedule for records of public school districts found in 13 Administrative Code 7.125 [see CPC].

25 TAC 40.65(f)-(g)

Reports

Not later than the 10th business day after the date a school personnel member or school volunteer administers an epinephrine delivery system in accordance with district policy, the school shall send a report to the school district; the physician who prescribed the epinephrine delivery system; and the commissioner of state health services.

The report must include the following information:

1. The age of the person who received the administration of the epinephrine delivery system;
2. Whether the person who received the administration of the epinephrine delivery system was a student, a school personnel member or school volunteer, or a visitor;
3. The physical location where the epinephrine delivery system was administered;
4. The number of doses of epinephrine delivery system administered;
5. The title of the person who administered the epinephrine delivery system; and
6. Any other information required by the commissioner of education.

Education Code 38.209

Notifications to the commissioner of DSHS shall be submitted on the designated electronic form available on the DSHS School Health Program website. *25 TAC 40.68(b)*

Assignment of Trained Individuals

At each campus in which a school adopts an unassigned epinephrine delivery system policy, the principal may assign school personnel or school volunteers to be trained to administer unassigned epinephrine delivery systems or seek school personnel or school volunteers who volunteer to be trained to administer unassigned epinephrine delivery systems.

In order to increase the number of trained individuals in the administration of unassigned epinephrine delivery systems, schools may distribute to school personnel or school volunteers in the district, at least once per school year, a notice that includes a description of the request seeking volunteers to be trained to administer an epinephrine delivery system to a person believed to be experiencing anaphylaxis and a description of the training that the school personnel or school volunteers will receive in the administration of epinephrine with a delivery system.

25 TAC 40.66(a)-(b)

Signed Statement

Trained school personnel or school volunteers who administer the unassigned epinephrine delivery system must submit a signed statement indicating that they agree to perform the service of administering an unassigned epinephrine delivery system to a student or individual that may be experiencing anaphylaxis. *25 TAC 40.66(c)*

Training

A district that adopts an unassigned epinephrine delivery system written policy is responsible for training school personnel and school volunteers in the administration of an unassigned delivery system.

Training must include information on:

1. Recognizing the signs and symptoms of anaphylaxis;
2. Administering an epinephrine delivery system;
3. Implementing emergency procedures, if necessary, after administering an epinephrine delivery system; and
4. Properly disposing of used or expired epinephrine delivery systems.

Training must be provided in accordance with the district professional development policy [see DMA].

Education Code 38.210(a), (b)

Each assigned school personnel or school volunteer shall receive initial training and an annual refresher training.

Training:

1. Shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs published by the federal Centers for Disease Control and Prevention;

2. May be provided in a formal face-to-face training session or through an online education course;

3. Must include information on properly inspecting unassigned epinephrine delivery systems for usage and expiration; and

4. Must include information about promptly notifying local emergency medical services.

25 TAC 40.67(1)-(2), (5)

The initial training must include hands-on training with an epinephrine delivery system trainer. The annual refresher training must include a hands-on demonstration of administration skills.

Each school campus shall maintain training records and make available upon request a list of those school personnel or school volunteers trained and authorized to administer the unassigned epinephrine delivery system on the campus.

25 TAC 40.67(3)-(4), (6)

Standing Orders

A physician or person who has been delegated prescriptive authority under Occupations Code Chapter 157 may prescribe epinephrine delivery systems in the name of a district in accordance with law. An order issued must contain the quantity and types of epinephrine delivery systems to be obtained and maintained under the order. *Education Code 38.211(a), (c)(3)*

A district shall obtain a prescription from an authorized health-care provider each year, to stock, possess, and maintain at least one unassigned adult epinephrine delivery system pack (two doses) on each school campus.

A school may choose to stock unassigned pediatric epinephrine auto-injector packs, based on the need of the school's population.

25 TAC 40.65(a)-(a)(1)

Epinephrine Coordinator

The superintendent will designate appropriate school personnel to coordinate and manage policy implementation, including training of school personnel, and the acquisition or purchase, usage, expiration, and disposal of unassigned epinephrine delivery systems. Throughout the school calendar year, the designated school personnel must coordinate with each campus to ensure that the unassigned epinephrine delivery systems are checked monthly for expi-

	ration and usage and the findings are documented. *25 TAC 40.65(b)*
Notice to Parents	If a district implements a policy for the maintenance, administration, and disposal of epinephrine delivery systems, the district shall provide written notice of the policy to a parent or guardian of each student enrolled in the district. Notice must be provided before the policy is implemented by the district and before the start of each school year. *Education Code 38.212* A district shall provide electronic or written notice to the parent or guardian of each student. If a district changes or discontinues the policy under this subchapter, written or electronic notice detailing the change or discontinuation must be provided to the parent or guardian of each student within 15 calendar days. *25 TAC 40.69*
Storage	Unassigned epinephrine delivery systems shall be stored in a secure, easily accessible area for an emergency, in accordance with manufacturer's guidelines. It is recommended that the school administrator develop a map to be placed in high traffic areas that indicates the location of the unassigned epinephrine delivery systems on each school campus. It is recommended that the map also indicates the locations of the automated external defibrillator (AED). *25 TAC 40.65(h)*
Replacement	The district shall develop a plan to replace, as soon as reasonably possible, any unassigned epinephrine delivery system that is used or close to expiration. *25 TAC 40.65(i)*
Disposal	Used unassigned epinephrine auto-injectors shall be considered infectious waste and shall be disposed of according to the school's bloodborne pathogen control policy. Expired unassigned epinephrine delivery systems shall be disposed of according to the school's medication disposal policy. *25 TAC 40.65(j)-(k)* [See DBB]
Gifts, Grants, and Donations	A district may accept gifts, grants, donations, and federal and local funds to implement its policy. *Education Code 38.213*

Maintenance and Administration of Medication for Respiratory Distress

Note: The following provisions apply only to a district that adopts a policy on medication for respiratory distress.

A district may adopt and implement a policy regarding the maintenance, administration, and disposal of unassigned medication for respiratory distress at each campus in the district. *Education Code 38.208(a-1); 25 TAC 40.44(a)*

If a policy is adopted, the policy must provide that school personnel and school volunteers who are authorized and trained may administer medication for respiratory distress to a person reasonably believed to be experiencing respiratory distress on a school campus, or at a school-sponsored or school-related activity on or off school property. *Education Code 38.208(b-1); 25 TAC 40.44(a)(1)(C)*

In developing the policy, a district may consider performing a review to include:

1. Consultation with school nurses, the local school health advisory committee, local health-care providers, or any department or organization involved with student well-being;
2. Campus geography; and
3. Student population size.

25 TAC 40.44(b)

An adopted unassigned medication for respiratory distress policy must be publicly available. *25 TAC 40.44(d)*

Definitions

“School personnel” means an employee of a district. The term includes a member of the board.

“School volunteer” means a person providing services for or on behalf of a district, on the premises of the district or at a school-sponsored or school-related activity on or off school property, who does not receive compensation in excess of reimbursement for expenses.

“Unassigned medication for respiratory distress” means albuterol, levalbuterol, or another medication based on the best available medical evidence for the treatment of respiratory distress that is:

1. Delivered by metered-dose inhaler (MDI) with a spacer (valved holding chamber) or by a nebulizer as a rescue medication;
2. Prescribed by an authorized health-care provider in the name of the district;

3. Issued with a non-patient-specific standing delegation order for the administration of a medication for respiratory distress; and

4. Issued by an authorized health-care provider.

Education Code 38.201(3-a), (6), 22.053(b); 25 TAC 40.42(8), (10), (12)

Each Campus During Regular School Hours

Each district that adopts a policy must require that each campus have one or more school personnel or school volunteers authorized and trained to administer unassigned medication for respiratory distress present during regular school hours, which means at least 30 minutes before the first bell to 30 minutes after the last bell of the school day. *Education Code 38.208(d-1); 25 TAC 40.42(5), 40.44(a)(1)(C)*

A “campus” is defined as a geographic unit of a district that:

1. Has an assigned administrator;

2. Has enrolled students who are counted for average daily attendance;

3. Has assigned instructional staff;

4. Provides instructional services to students;

5. Has one or more grades in the range from early childhood education through grade 12 or is ungraded; and

6. Is subject to Texas laws.

25 TAC 40.42(2)

Medication Inventory

Subject to the availability of funding, a district that adopts a policy must allow for treatment of multiple students and secure or obtain at least:

1. One MDI with appropriate spacers (valved holding chambers) to accommodate the developmental needs of the student population; or

2. At least five vials of nebulizer solution with appropriate nebulizer-required equipment to accommodate the developmental needs of the student population.

25 TAC 40.44(a)(2)

In addition to the minimum number of doses described above, the number of additional doses may be determined by an individual campus review led by an authorized health-care provider. *25 TAC 40.45(b)(2)*

Designated Campus Administrator

A district that adopts a policy must include in the policy the designated campus administrator to coordinate and manage policy implementation for each campus, which includes:

1. Conducting a review at the campus to determine the need for additional doses;
2. Training school personnel and school volunteers;
3. Acquiring or purchasing, maintaining, storing, and using unassigned medication for respiratory distress, subject to available campus funding; and
4. Disposing of expired unassigned medication for respiratory distress.

25 TAC 40.44(c)(1)

Notification Procedures

Each district that adopts a policy must include in the policy the procedures for notifying a parent, prescribing authorized health-care provider, and the student's primary health-care provider when unassigned medication for respiratory distress is administered. *25 TAC 40.44(c)(4)*

Referral Required

If unassigned medication for respiratory distress is administered to a student whose parent or guardian has not provided notification to the school that the student has been diagnosed with asthma, the school must refer the student to the student’s primary care provider on the day the medication for respiratory distress is administered and inform the student’s parent or guardian regarding the referral. The referral must include:

1. The symptoms of respiratory distress observed;
2. The name and dosage of the unassigned medication for respiratory distress administered to the student;
3. Any patient care instructions given to the student; and
4. Information about the purpose and use of an asthma action plan and medical authorization for schools, including a blank copy of the plan and authorization the provider completes and returns to the school.

If a student who has received medication for respiratory distress does not have a primary care provider or the parent or guardian of the student has not engaged a primary care provider for the student, the student’s parent or guardian must receive information to assist the parent or guardian in selecting a primary care provider for the student.

Education Code 38.208(b-2)-(b-3); 25 TAC 40.44(c)(6)-(7)

Storage

The supply of medication for respiratory distress at each campus must be stored in accordance with the manufacturer's guidelines and local policy of the district in a secure location and be easily accessible to authorized school personnel and school volunteers. *Education Code 38.208(e-1); 25 TAC 40.45(d)*

The location of the unassigned medication for respiratory distress must be specified in the policy. *25 TAC 40.44(c)(3)*

Disposal

The policy must include a plan to check inventory of unassigned medication for respiratory distress for expiration at least twice during the school year, to replace, as soon as reasonably possible, and to document the findings. *25 TAC 40.44(c)(5)*

Expired unassigned medication for respiratory distress and other used or expired supplies must be disposed of in accordance with the manufacturer's guidelines and local policy of the district. *25 TAC 40.45(e)*

Records Retention

Records relating to implementing and administering the district’s unassigned medication for respiratory distress policy must be retained per the campus record retention schedule. *25 TAC 40.47(a)*

Training

Each district that adopts a policy for the administration of medication for respiratory distress is responsible for training school personnel and school volunteers in the administration of medication for respiratory distress. Each authorized school personnel or school volunteer must receive initial training and an annual refresher training. The training must:

1. Include information on recognizing the signs and symptoms of respiratory distress;
2. Include information on administering medication for respiratory distress;
3. Include information on implementing emergency procedures, if necessary, after administering medication for respiratory distress;
4. Include information on proper sanitization, reuse, and disposal of medication for respiratory distress;
5. Cover the authorized health-care provider's standing order;
6. Include processes to follow-up with the prescribing authorized health-care provider and the student's primary health-care provider;
7. Provide information on the report required after administering unassigned medication [see below];

8. Include information on the district's adopted unassigned medication for respiratory distress policy;

9. Incorporate hands-on training with unassigned medication for respiratory distress; and

10. Inform school personnel or school volunteers of the purpose and use of asthma action plans.

Education Code 38.210(a-1); 25 TAC 40.46(a)

Training must be provided in a formal training session or through online education and must be provided in accordance with the district professional development policy [see DMA]. *Education Code 38.210(b)*

The policy must include a list of trained and authorized school personnel and school volunteers available to administer unassigned medication for respiratory distress. *25 TAC 40.44(c)(2)*

Each campus must maintain training records and must make available upon request a list of school personnel and school volunteers trained and authorized to administer unassigned medication for respiratory distress at the campus or at a school-sponsored event. *25 TAC 40.46(b)*

Reporting Requirement

Not later than the 10th business day after the date a school personnel member or school volunteer administers medication for respiratory distress to a person experiencing respiratory distress, the school shall report the following information to the district, the physician or other person who prescribed the medication for respiratory distress, and the commissioner of state health services:

1. The age of the person who received the administration of the medication for respiratory distress;

2. Whether the person who received the administration of the medication for respiratory distress was a student, a school personnel member or school volunteer, or a visitor;

3. The dosage of the medication for respiratory distress administered;

4. The title of the person who administered the medication for respiratory distress; and

5. Any other information required by the commissioner.

Notifications to the commissioner of state health services must be submitted on the designated electronic form available on the DSHS School Health Program website found at dshs.texas.gov.

Education Code 38.2091; 25 TAC 40.47

No Negative Fiscal Impact

The policy may not require a district to purchase prescription medication for respiratory distress or require any other expenditure related to the maintenance or administration of medication for respiratory distress that would result in a negative fiscal impact on the district or school. *Education Code 38.208(f)*

Standing Order

A physician or person who has been delegated prescriptive authority under Occupations Code Chapter 157 may prescribe medication for respiratory distress in the name of a school district. *Education Code 38.211(a)*

Each district campus in a district that adopts a policy for the administration of medication for respiratory distress must obtain a prescription from an authorized health-care provider to stock, possess, and maintain unassigned medication for respiratory distress at each campus and any equipment necessary to administer the medication. The campus must renew this prescription or obtain a new prescription annually. *25 TAC 40.45(b)*

Notice to Parents

If a district implements a policy for the maintenance, administration, and disposal of medication for respiratory distress, the district shall provide written or electronic notice of the policy to a parent or guardian of each student enrolled in the district. Notice must be provided before the policy is implemented by the district and before the start of each school year. *Education Code 38.212; 25 TAC 40.48(a)*

If a district changes or discontinues the unassigned medication for respiratory distress policy, the campus must provide written or electronic notice detailing the change or discontinuation of the policy to a parent or guardian of each student within 15 calendar days after the change or discontinuation. *25 TAC 40.48(b)*

Vendor Contracts

The board may contract with a vendor to provide medication for respiratory distress and related equipment to the district and training to school personnel and school volunteers authorized to administer medication for respiratory distress under Education Code Chapter 38, Subchapter E. *Education Code 38.2115*

Refusal to Administer

A school personnel member or school volunteer may not be subject to any penalty or disciplinary action for refusing to administer or receive training to administer epinephrine delivery systems or medication for respiratory distress, as applicable, in accordance with a policy for the maintenance and administration of epinephrine

delivery systems or a policy for medication for respiratory distress. *Education Code 38.208(d-2)*

Immunity from Liability

A person who in good faith takes, or fails to take, any action related to Education Code Chapter 38, Subchapter E, related to the maintenance and administration of epinephrine delivery systems and medication for respiratory distress, is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act as described by Education Code 38.215 and 25 Administrative Code 40.49. *Education Code 38.215; 25 TAC 40.71*

No employee shall give any student prescription medication, nonprescription medication, herbal substances, anabolic steroids, or dietary supplements of any type, except as authorized by this or other District policy.

Medication Provided by Parent

The Superintendent shall designate the employees who are authorized to administer medication that has been provided by a student's parent. An authorized employee is permitted to administer the following medication in accordance with administrative regulations:

1. Prescription medication in accordance with legal requirements.
2. Nonprescription medication in accordance with legal requirements.
3. Herbal substances or dietary supplements provided by the parent and only if required by the individualized education program or Section 504 plan for a student with disabilities.

Medication Provided by District

Except as required by law and provided by this policy, the District shall not purchase medication to administer to a student.

Epinephrine

The District authorizes school personnel who have agreed in writing and been adequately trained to administer an unassigned epinephrine delivery system, such as an auto-injector or nasal spray, in accordance with law and this policy. Administration of epinephrine shall only be permitted when an authorized and trained individual reasonably believes a person is experiencing anaphylaxis.

On Campus

Authorized and trained individuals may administer an unassigned epinephrine delivery system at any time to a person experiencing anaphylaxis on a school campus.

The District shall ensure that at each campus a sufficient number of authorized individuals are trained to administer epinephrine so that at least one trained individual is present on campus during all hours the campus is open. In accordance with state rules, the campus shall be considered open for this purpose during regular on-campus school hours and whenever school personnel are physically on site for school-sponsored activities.

Maintenance, Availability, and Training

The Superintendent shall develop administrative regulations designating a coordinator to manage policy implementation and addressing annual training of authorized individuals in accordance with law; procedures for delivery system use; and acquisition or purchase, maintenance, expiration, disposal, and availability of unassigned epinephrine at each campus.

Notice to Parents

In accordance with law, the District shall provide notice of the policy to parents regarding the epinephrine program, including notice of any change to or discontinuation of this program.

Opioid Antagonist

This provision shall be applicable to each campus that serves students in grades 6-12.

On Campus

The District authorizes school personnel who have been adequately trained to administer an opioid antagonist in accordance with law and this policy. Administration of an opioid antagonist shall only be permitted when an authorized and trained individual reasonably believes a person is experiencing an opioid-related overdose.

Each applicable campus shall have at least one individual who is authorized and trained to administer an opioid antagonist present during regular school hours.

Maintenance, Availability, Training, and Reporting

Each applicable campus shall have at least two unused, unexpired opioid antagonist doses available.

All opioid antagonists shall be stored in a secure location and shall be easily accessible by individuals who are authorized and trained to administer an opioid antagonist.

The Superintendent shall develop administrative regulations addressing acquisition, maintenance, expiration, and disposal of opioid antagonists in the District, as well as reporting, employee training, and emergency notification requirements.

Psychotropics

Except as permitted by law, an employee shall not:

1. Recommend to a student or a parent that the student use a psychotropic drug;
2. Suggest a particular diagnosis; or
3. Exclude the student from a class or a school-related activity because of the parent's refusal to consent to psychiatric evaluation or examination or treatment of the student.

Medical Treatment

A student's parent, legal guardian, or other person having lawful control shall annually complete and sign a form that provides emergency information and addresses authorization regarding medical treatment. A student who has reached age 18 shall be permitted to complete this form.

The District shall seek appropriate emergency care for a student as required or deemed necessary.

Threat Assessment

Definitions

"Harmful, threatening, or violent behavior" includes behaviors, such as verbal threats, threats of self harm, bullying, cyberbullying, fighting, the use or possession of a weapon, sexual assault, sexual harassment, dating violence, stalking, or assault, by a student that could result in:

1. Specific interventions, including mental health or behavioral supports;
2. In-school suspension;
3. Out-of-school suspension; or
4. The student's expulsion or removal to a disciplinary alternative education program (DAEP) or a juvenile justice alternative education program (JJAEP).

"Team" means a threat assessment and safe and supportive school team established by the board under Education Code 37.115.

Education Code 37.115(a)

Threat Assessment and Safe and Supportive Schools Team

The board shall establish a threat assessment and safe and supportive school team to serve at each campus of the district and shall adopt policies and procedures for the teams.

The team is responsible for developing and implementing the safe and supportive school program in compliance with Texas Education Agency (TEA) rules at the district campus served by the team.

The policies and procedures adopted under Education Code 37.115 must:

1. Be consistent with the model policies and procedures developed by the Texas School Safety Center (TxSSC) [see Education Code 37.220];
2. Require each team to complete training provided by the TxSSC or a regional education service center (ESC) regarding evidence-based threat assessment programs;
3. Require each team established under this section to report the required information regarding the team's activities to TEA [see Reporting to TEA, below];
4. Require each district campus to establish a clear procedure for a student to report concerning behavior exhibited by another student for assessment by the team or other appropriate school employee;

5. Provide for:

   a. A district employee who reports a potential threat to a team to elect for the employee's identity to be confidential and not subject to disclosure Government Code Chapter 552 (Public Information Act), except as necessary for the team, the district, or law enforcement to investigate the potential threat; and

   b. The district to maintain a record of the identity of a district employee who elects for the employee's identity to be confidential; and

6. Require that, as soon as safe and practicable after an administrator or team for a district campus receives information regarding a threat made against that campus, including threats made through social media, the administrator or team shall immediately provide notice to each member of the teaching staff, including teacher's aides, who may be directly affected by the threat that must include a statement of the existence of the threat, the nature of the threat, and any other pertinent details to ensure student and staff safety.

Membership

General Team Composition

The superintendent shall ensure, to the greatest extent practicable, that the members appointed to each team have expertise in counseling, behavior management, mental health and substance use, classroom instruction, special education, school administration, school safety and security, emergency management, and law enforcement. A team may serve more than one campus of a district, provided that each district campus is assigned a team, and in serving a particular campus, the team includes the person designated to serve as the campus behavior coordinator for that campus.

Assessment of Student in Special Education Program

If a student in a special education program under Education Code Chapter 29, Subchapter A, is the subject of a threat assessment, the team conducting the assessment must include at least one person who has specific knowledge of the student's disability and the disability's manifestations and who is:

1. A special education teacher who provides instruction to the student;

2. A behavior analyst licensed under Occupations Code Chapter 506;

3. A clinical or master social worker licensed under Occupations Code Chapter 505; or

4. A specialist in school psychology licensed under Occupations Code Chapter 501.

If a student in a special education program under Education Code Chapter 29, Subchapter A, is the subject of a threat assessment, the team conducting the assessment must include a person who has knowledge of student disabilities and how student disabilities manifest and may include:

1. An educational diagnostician;
2. A behavior specialist;
3. A special education teacher assigned to the student;
4. A licensed behavior analyst;
5. A licensed clinical or licensed master social worker; or
6. A licensed specialist in school psychology.

Oversight Committee

The superintendent may establish a committee, or assign to an existing committee established by the district, the duty to oversee the operations of teams established for the district. A committee with oversight responsibility must include members with expertise in human resources, education, special education, counseling, behavior management, school administration, mental health and substance use, school safety and security, emergency management, and law enforcement.

Team Duties

Each team shall:

1. Conduct a threat assessment that includes assessing and reporting individuals who make threats of violence or exhibit harmful, threatening, or violent behavior in accordance with district policies and procedures; and gathering and analyzing data to determine the level of risk and appropriate intervention, including:
    a. Referring a student for mental health assessment; and
    b. Implementing an escalation procedure, if appropriate, based on the team's assessment, in accordance with district policy;
2. Provide guidance to students and school employees on recognizing harmful, threatening, or violent behavior that may pose a threat to the community, school, or individual; and
3. Support the district in implementing the district's multihazard emergency operations plan [see CKC].

Use of Sentinel Assessment Instrument, Manual, and Field Guide

Effective August 1, 2025, when conducting a threat assessment, members of a threat assessment team shall utilize the threat assessment instrument, manual, and field guide in Sentinel [see CKA], which are consistent with the model policies published by the TxSSC. *19 TAC 103.1213(e)(1)(A)*

Parental Participation

Before a team may conduct a threat assessment of a student, the team must notify the parent of or person standing in parental relation to the student regarding the assessment. In conducting the assessment, the team shall provide an opportunity for the parent or person to participate in the assessment, either in person or remotely, and to submit to the team information regarding the student.

After completing a threat assessment of a student, the team shall provide to the parent of or person standing in parental relation to the student the team's findings and conclusions regarding the student.

Consent for Mental Health-Care Service

A team may not provide a mental health-care service to a student who is under 18 years of age unless the team obtains written consent from the parent of or the person standing in parental relation to the student before providing the mental health-care service. The consent must be submitted on a form developed by the district that complies with all applicable state and federal law. The student's parent or person standing in parental relation to the student may give consent for a student to receive ongoing services or may limit consent to one or more services provided on a single occasion.

Education Code 37.115(c)-(g)

Determination of Risk

On determination that a student or other individual poses a serious risk of violence to self or others, a team shall immediately report the team's determination to the superintendent, and if the individual is a student, immediately attempt to inform the parent or person standing in parental relation to the student. These requirements do not prevent an employee of the school from acting immediately to prevent an imminent threat or respond to an emergency.

A team identifying a student at risk of suicide shall act in accordance with the district's suicide prevention program. If the student at risk of suicide also makes a threat of violence to others, the team shall conduct a threat assessment in addition to actions taken in accordance with the district's suicide prevention program.

A team identifying a student using or possessing tobacco, drugs, or alcohol shall act in accordance with district policies and procedures related to substance use prevention and intervention.

Education Code 37.115(h)-(j)

Recordkeeping

Materials and information provided to or produced by a team during a threat assessment of a student under this provision must be maintained in the student's school record until the student's 24th birthday. *Education Code 37.115(j-1)*

[For information regarding the transfer of threat assessment records between school districts, see FD and FDA.]

Reporting to TEA

A team must report to TEA in accordance with TEA-developed guidelines the following information regarding the team's activities and other information for each campus the team serves:

1. The occupation of each person appointed to the team;
2. The number of threats and description of the type of threats reported to the team;
3. The outcome of each assessment made by the team, including:
    a. Any disciplinary action taken, including a change in school placement;
    b. Any action taken by law enforcement; or
    c. A referral to or change in counseling, mental health, special education, or other services;
4. The total number, disaggregated by student gender, race, and status as receiving special education services, being at risk of dropping out of school, being in foster care, experiencing homelessness, being a dependent of military personnel, being pregnant or a parent, having limited English proficiency, or being a migratory child, of, in connection with an assessment or reported threat by the team:
    a. Citations issued for Class C misdemeanor offenses;
    b. Arrests;
    c. Incidents of uses of restraint;
    d. Changes in school placement, including placement in a JJAEP or DAEP;
    e. Referrals to or changes in counseling, mental health, special education, or other services;
    f. Placements in in-school suspension or out-of-school suspension and incidents of expulsion;
    g. Unexcused absences of 15 or more days during the school year; and

h. Referrals to juvenile court for truancy; and

5. The number and percentage of school personnel trained in:

   a. A best-practices program or research-based practice under Education Code 38.351 [see FFEB], including the number and percentage of school personnel trained in suicide prevention or grief and trauma-informed practices;

   b. Mental health or psychological first aid for schools;

   c. Training relating to the safe and supportive school program; or

   d. Any other program relating to safety identified by the commissioner.

Education Code 37.115(k)

Threat Assessment and Safe and Supportive Team

In compliance with law, the Superintendent shall ensure that a multidisciplinary threat assessment and safe and supportive team is established to serve each campus. The Superintendent shall appoint team members. The team shall be responsible for developing and implementing a safe and supportive school program at each campus served by the team and shall support the District in implementing its multi-hazard emergency operations plan.

Training

Each team shall complete training provided by an approved provider on evidence-based threat assessment programs.

Student Reports

Each campus shall establish a clear procedure for a student to report concerning behavior exhibited by another student for assessment by the team or other appropriate District employee.

Employee Confidentiality

A District employee who reports a potential threat may elect for the employee's identity to remain confidential and not be subject to disclosure under the state's public information law. The employee's identity shall only be revealed when necessary for the team, the District, or law enforcement to investigate the reported threat.

The District shall maintain a record of the identity of a District employee who elects for the employee's identity to remain confidential.

Notification to Teaching Staff of Threat

As soon as safe and practicable after an administrator or team receives information regarding a threat against a campus, including a threat made through social media, the appropriate administrator or the team shall immediately provide to each member of the teaching staff, including teacher aides, who may be directly affected by the threat a statement containing the following information:

1. The existence of the threat;
2. The nature of the threat; and
3. Any other pertinent detail to ensure student and staff safety.

The Superintendent shall develop administrative regulations to ensure that the required notice is provided to the teaching staff in accordance with law. The administrative regulations may also address notification of other appropriate employees on the affected campus.

Imminent Threats or Emergencies

A member of the team or any District employee may act immediately to prevent an imminent threat or respond to an emergency, including contacting law enforcement directly.

Threat Assessment Process

The District shall develop procedures as recommended by the Texas School Safety Center. In accordance with those procedures,

the threat assessment and safe and supportive team shall conduct threat assessments using a process that includes:

1. Identifying individuals, based on referrals, tips, or observations, whose behavior has raised concerns due to threats of violence or exhibition of behavior that is harmful, threatening, or violent.

2. Conducting an individualized assessment based on reasonably available information to determine whether the individual poses a threat of violence or poses a risk of harm to self or others and the level of risk.

3. Implementing appropriate intervention and monitoring strategies, if the team determines an individual poses a threat of harm to self or others. These strategies may include referral of a student for a mental health assessment and escalation procedures as appropriate.

   For a student or other individual the team determines poses a serious risk of violence to self or others, the team shall immediately report to the Superintendent, who shall immediately attempt to contact the student's parent or guardian. Additionally, the Superintendent shall coordinate with law enforcement authorities as necessary and take other appropriate action in accordance with the District's multihazard emergency operations plan.

   For a student the team identifies as at risk of suicide, the team shall follow the District's suicide prevention program.

   For a student the team identifies as having a substance abuse issue, the team shall follow the District's substance abuse program.

   For a student whose conduct may constitute a violation of the District's Student Code of Conduct, the team shall make a referral to the campus behavior coordinator or other appropriate administrator to consider disciplinary action.

As appropriate, the team may refer a student:

1. To a local mental health authority or health-care provider for evaluation or treatment; or

2. For a full individualized and initial evaluation for special education services.

The team shall not provide any mental health-care services, except as permitted by law.

Guidance to School Community	The team shall provide guidance to students and District employees on recognizing harmful, threatening, or violent behavior that may pose a threat to another person, the campus, or the community and methods to report such behavior to the team, including through anonymous reporting.
Reports	The team shall provide reports to the Texas Education Agency as required by law.

Parental Consent and Review

A board shall adopt guidelines to ensure that written consent is obtained from the parent, legal guardian, or other person entitled to enroll the student under Education Code 25.001(j) for the student to participate in those activities for which parental consent is required. *Education Code 33.003*

Each school shall obtain, and keep as part of the student's permanent record, this written consent by the parent or legal guardian. The consent form shall include specific information on the content of the program and the types of activities in which the student will be involved.

Each school, before implementing a comprehensive school counseling program, shall annually conduct a preview of the program for parents and guardians. All materials, including curriculum to be used during the year that is not available digitally through an instructional material parent portal under Education Code 31.154, must be available for a parent or guardian to preview during school hours. Materials or curriculum not included in the materials on an instructional materials parent portal or available on the campus for preview may not be used.

Education Code 33.004

Child Consent to Counseling

A child may consent to counseling for:

1. Suicide prevention,
2. Chemical addiction or dependency; or
3. Sexual, physical, or emotional abuse.

Family Code 32.004(a)

[For more information about consent for mental health treatment, see FFEB.]

Comprehensive School Counseling Program

A school counselor shall work with the school faculty and staff, students, parents, and the community to plan, implement, and evaluate a comprehensive school counseling program that conforms to the most recent edition of the Texas Model for Comprehensive School Counseling Programs developed by the Texas Counseling Association.

The school counselor shall design the developmental guidance and counseling program to include:

1. A guidance curriculum to help students develop their full educational potential, including the student's interests and career objectives.

2. A responsive services component to intervene on behalf of any student whose immediate personal concerns or problems put the student's continued educational, career, personal, or social development at risk.

3. An individual planning system to guide a student as the student plans, monitors, and manages the student's own educational, career, personal, and social development.

4. System support to support the efforts of teachers, staff, parents, and other members of the community in promoting the educational, career, personal, and social development of students.

Education Code 33.005

Higher Education Counseling

Each school counselor at an elementary, middle, or junior high school shall advise students and their parents or guardians regarding the importance of postsecondary education, coursework designed to prepare students for postsecondary education, and financial aid availability and requirements.

During the first school year a student is enrolled in high school, and again during each year of a student's enrollment in high school, a school counselor shall provide information about higher education to the student and the student's parent or guardian. The information must cover:

1. The importance of postsecondary education, including career readiness and workforce training opportunities and a link to the My Texas Future internet website and information regarding how to create a profile on that website;

2. The advantages of earning an endorsement and a performance acknowledgment and completing the distinguished level of achievement under the foundation high school program;

3. The disadvantages of taking courses to prepare for a high school equivalency examination relative to the benefits of taking courses leading to a high school diploma;

4. Financial aid eligibility;

5. Instruction on how to apply for federal financial aid;

6. The center for financial aid information established under Education Code 61.0776;

7. The automatic admission of certain students to general academic teaching institutions as provided by Education Code 51.803;

8. The eligibility and academic performance requirements for the TEXAS Grant;

9. The availability of programs in a district under which a student may earn college credit, including advanced placement programs, dual credit programs, joint high school and college credit programs, and international baccalaureate programs;

10. The availability of education and training vouchers and tuition and fee waivers to attend an institution of higher education as provided by Education Code 54.366 for a student who is or was previously in the conservatorship of the Department of Family and Protective Services;

11. The availability of college credit awarded by institutions of higher education to veterans and military servicemembers for military experience, education, and training obtained during military service as described by the information materials developed by the commissioner in cooperation with the Texas Higher Education Coordinating Board under Labor Code 302.0031(h);

12. Opportunities to complete career training and obtain a postsecondary credential while enrolled in high school, whether at the student's campus, another campus in the district, or an educational institution that partners with the district, including information regarding program costs, program completion rates, and the average wages of students who complete the program and the availability of information regarding those opportunities on the My Texas Future website; and

13. The outcomes of graduates from the campus and district in which the student is enrolled, including completion rates and average wages based on postsecondary pathways available to those graduates at the campus or district using data posted under Education Code 7.0405(a) or available on the My Texas Future internet website.

When providing information under item 10, above, the school counselor must report to the student and the student's parent or guardian the number of times the counselor has provided the information to the student.

When providing information under item 11, the school counselor must explain to any student who is enlisted or intends to enlist in

the armed forces of the United States the informational materials developed under Labor Code 302.0031.

The Texas Education Agency or the Texas Higher Education Coordinating Board shall make available to school counselors an annual online training regarding statewide trends identified in the data posted under Education Code 7.0405(a) that includes information to assist school counselors in identifying the postsecondary outcomes for students at the counselor's campus and school district for purposes of performing the counselor's duties identified under item 13.

Automatic Admission

At the beginning of grades 10 and 11, a certified school counselor shall explain the requirements of automatic admission to a general academic teaching institution to each student who has a grade point average in the top 25 percent of the student's high school class. [See EIC]

Education Code 33.007; 19 TAC 78.2001

Notice of Grant Programs

In a manner that assists the district in implementing the district improvement plan, a district shall notify students in middle school, junior high school, and high school and those students' teachers, school counselors, and parents of:

1. The TEXAS Grant;
2. Teach for Texas Grant programs;
3. Future Texas Teachers Scholarship programs;
4. The eligibility requirements of each program;
5. The need for students to make informed curriculum choices to be prepared for success beyond high school; and
6. Sources of information on higher education admissions and financial aid.

Education Code 56.308(b)(1)

Note: For information about mental health curriculum and SHAC responsibilities, see EHAA. For information about threat assessments, see FFB. For personnel information about mental health professionals, see DP.

Mental Health Condition

"Mental health condition" means a persistent or recurrent pattern of thoughts, feelings, or behaviors that:

1. Constitutes a mental illness, disease, or disorder, other than or in addition to epilepsy, substance abuse, or an intellectual disability; or
2. Impairs a person's social, emotional, or educational functioning and increases the risk of developing such a condition.

Education Code 5.001(5-a)

Student Programs

The Texas Education Agency (TEA), in coordination with the Health and Human Services Commission and regional education service centers (ESCs), shall provide and annually update a list of recommended best practice-based programs and research-based practices in the areas specified below for implementation in public elementary, junior high, middle, and high schools within the general education setting. Each district may select from the list a program or programs appropriate for implementation in the district.

Subject Areas

The list must include programs and practices in the following areas:

1. Early mental health prevention and intervention;
2. Building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;
3. Substance abuse prevention and intervention;
4. Suicide prevention, intervention, and postvention;
5. Grief-informed and trauma-informed practices;
6. Positive school climates;
7. Positive behavior interventions and supports;
8. Positive youth development; and
9. Safe, supportive, and positive school climate.

"School climate" means the quality and character of school life, including interpersonal relationships, teaching and learning prac-

tices, and organizational structures, as experienced by students enrolled in the district, parents of those students, and personnel employed by the district.

[For information on employee training, see DMA.]

Practices and Procedures

A district shall develop practices and procedures concerning each area listed above, including mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention, that:

1. Include a procedure for providing educational material to all parents and families in the district that contains information on identifying risk factors, accessing resources for treatment or support provided on and off campus, and accessing available student accommodations provided on campus;

2. Include a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs, which may include declining academic performance, depression, anxiety, isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others;

3. Include a procedure for providing notice of a student identified as at risk of attempting suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs;

4. Establish that the district may develop a reporting mechanism and may designate at least one person to act as a liaison officer in the district for the purposes of identifying students in need of early mental health or substance abuse intervention or suicide prevention;

5. Set out available counseling alternatives for a parent or guardian to consider when his or her child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention; and

6. Include procedures:

    a. To support the return of a student to school following hospitalization or residential treatment for a mental health condition or substance abuse; and

    b. For suicide prevention, intervention, and postvention.

The practices and procedures may address multiple subject areas [see Subject Areas, above]. The practices and procedures must prohibit the use without the prior consent of a student's parent or guardian of a medical screening of the student as part of the process of identifying whether the student is possibly in need of early mental health or substance abuse intervention or suicide prevention.

The practices and procedures developed must be included in the annual student handbook and the district improvement plan under Education Code 11.252. [See BQ]

Nothing in these provisions is intended to interfere with the rights of parents or guardians and the decision-making regarding the best interest of the child. Practices and procedures developed in accordance with these provisions are intended to notify a parent or guardian of a need for mental health or substance abuse intervention so that a parent or guardian may take appropriate action. These provisions do not give districts the authority to prescribe medications. Any and all medical decisions are to be made by a parent or guardian of a student.

"Postvention" includes activities that promote healing necessary to reduce the risk of suicide by a person affected by the suicide of another.

Education Code 38.351(a)–(f), (i)–(o)

Immunity

The above requirements do not waive any immunity from liability of a district or of district officers or employees, create any liability for a cause of action against a district or against district officers or employees, or waive any immunity from liability under Civil Practice and Remedies Code 74.151. *Education Code 38.352*

Student Identification Cards

Each student identification card issued by a public school to a student in grade six or higher must have printed on the card the contact information for the National Suicide Prevention Lifeline and the Crisis Text Line. The student identification card may have printed on the card the contact information for a local suicide prevention hotline, if available. *Education Code 38.353*

Consent to Examinations, Tests, or Treatment

A district employee or contractor must obtain the written consent of a child's parent in the manner required by Education Code 26.009(a-2) before the employee or contractor may conduct a psychological or psychiatric examination, test, or treatment, unless the examination, test, or treatment is required by:

1. TEA's policy concerning child abuse investigations and reports under Education Code 38.004; or

2. State or federal law regarding requirements for special education.

Education Code 26.009(a)(1)

[For more information regarding required parental consent for a psychological or psychiatric examination, test, or treatment, see FFA. For more information about consent to medical treatment, including psychological treatment under certain circumstances, see FFAC. For information about consent to counseling, see FFEA.]

Professional's Authority

A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a child has been sexually, physically, or emotionally abused; is contemplating suicide; or is involved in chemical or drug addiction or dependency may:

1. Counsel the child without the consent of the child's parents, managing conservator, or guardian;
2. With or without the consent of a child who is a client, advise the parents, managing conservator, or guardian of the treatment given to or needed by the child;
3. Rely on the written statement of the child containing the grounds on which the child has capacity to consent to his or her own treatment as provided above.

Exception: Court Order

The physician, psychologist, counselor, or social worker may not counsel a child if consent is prohibited by a court order, unless consent is obtained as otherwise allowed by law.

Family Code 32.004(b), (c)

[See DP for more information about LSSP and school counselor responsibilities.]

Consent to LSSP

Informed consent for a licensed specialist in school psychology (LSSP) must be obtained in accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) and the U.S. Department of Education's rules governing parental consent when delivering school psychological services in the public schools, and is considered to meet the requirements for informed consent under the Texas State Board of Examiners of Psychologists (TSBEP) rules. No additional informed consent, specific to any Texas Behavioral Health Executive Council (TBHEC) rules, is necessary in this context. Licensees providing psychological services under 22 Administrative Code 465.38(e)(2), however, must obtain informed consent as otherwise required by the TBHEC rules. *22 TAC 465.38(g)*

Professional Immunity

A psychologist, counselor, or social worker licensed or certified by the state is not liable for damages except those damages that may result from his or her negligence or willful misconduct. *Family Code 32.004(d)*

Outside Counselors

Neither a district nor an employee of a district may refer a student to an outside counselor for care or treatment of a chemical dependency or an emotional or psychological condition unless the district does all of the following:

1. Obtains prior written consent for the referral from the student's parent, managing conservator, or guardian.
2. Discloses to the student's parent, managing conservator, or guardian any relationship between the district and the outside counselor.
3. Informs the student and the student's parent, managing conservator, or guardian of any alternative public or private source of care or treatment reasonably available in the area.
4. Requires the approval of appropriate district personnel before a student may be referred for care or treatment or before a referral is suggested as being warranted.
5. Specifically prohibits any disclosure of a student record that violates state or federal law.

Education Code 38.010

[See FFEA for information on the comprehensive guidance program. See FFB for mental health-care services provided by the threat assessment and safe and supportive school team.]

Psychotropics and Psychiatric Evaluations

A district employee may not:

1. Recommend that a student use a psychotropic drug; or
2. Suggest any particular diagnosis; or
3. Use the refusal by a parent to consent to administration of a psychotropic drug to a student or to a psychiatric evaluation or examination of a student as grounds, by itself, for prohibiting the child from attending a class or participating in a school-related activity.

Psychotropic drug means a substance that is used in the diagnosis, treatment, or prevention of a disease or as a component of a medication and intended to have an altering effect on perception, emotion, or behavior.

Education Code 38.016(b) does not:

1. Prevent an appropriate referral under the Child Find system required under 20 U.S.C. Section 1412, as amended; or

2. Prohibit a school district employee, or an employee of an entity with which the district contracts, who is a registered nurse, advanced nurse practitioner, physician, or nonphysician mental health professional licensed or certified to practice in this state from recommending that a child be evaluated by a physician or nonphysician mental health professional; or

3. Prohibit a school employee from discussing any aspect of a child's behavior or academic progress with the child's parent or another school district employee.

A board shall adopt a policy to ensure implementation and enforcement of Education Code 38.016. [See FFAC]

A violation of Education Code 38.016(b) does not override the immunity from personal liability granted in Education Code 22.0511 or other law or a district's sovereign or governmental immunity.

Nonphysician mental health professional has the meaning assigned by Education Code 38.0101 [see DP].

Education Code 38.016

[For information regarding administration of medication, see FFAC.]

Child Abuse Reporting

An employee may not use or threaten to use the refusal of a parent, guardian, or managing or possessory conservator to administer or consent to the administration of a psychotropic drug to a child, or to consent to any other psychiatric or psychological testing or treatment of the child, as the sole basis for making a report of neglect, unless the employee has cause to believe that the refusal:

1. Presents a substantial risk of death, disfigurement, or bodily injury to the child; or

2. Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Education Code 26.0091; Family Code 261.111(a) [See FFG]

Notice of Educator Misconduct

The board shall adopt a policy under which notice is provided to the parent or guardian of a student with whom a person employed by or acting as a service provider for the district is alleged to have engaged in the following misconduct:

1. The person abused or otherwise committed an unlawful act with a student or a minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Penal Code Chapter 9, regardless of whether the conduct resulted in bodily injury. *Education Code 22A.051(a)(2)(A)*

2. The person was involved in or solicited a romantic relationship with or solicited or engaged in sexual contact with a student or minor. *Education Code 22A.051(a)(2)(B)*

3. The person engaged in inappropriate communications with a student or minor, as defined by State Board for Educator Certification (SBEC) rule. *Education Code 22A.051(a)(2)(C)*

4. The person failed to maintain appropriate boundaries with a student or minor, as defined by SBEC rule. *Education Code 22A.051(a)(2)(D)*

The notice must inform the parent or guardian:

1. That the alleged misconduct occurred;

2. Whether the person was terminated following an investigation of the alleged misconduct or resigned before completion of the investigation; and

3. Whether a report was submitted to the Texas Education Agency or SBEC concerning the alleged misconduct.

The policy must require that information specified in item 1 above be provided as soon as feasible after the district becomes aware that alleged misconduct may have occurred.

Education Code 22A.053

[For the reporting requirements applicable to educator or service provider misconduct, see DHB.]

For purposes of this requirement, “service provider” means a person who provides services to a school district. The term includes, but is not limited to, a contractor or subcontractor, a tutoring provider, an entity that has entered into a contract to operate a district campus under Education Code 11.174, a staffing provider, or any person employed or controlled by any of these individuals or

entities that provides services to the district. *Education Code 22A.001*

Notice of Suspected Criminal Offense

A parent is entitled to notification not later than one school business day after the date a school district employee first suspects that a criminal offense has been committed against the parent's child, except as provided by Education Code 38.004 (child abuse investigations). *Education Code 26.008(a)(2)*

Depiction of Minors in Visual Material

Definitions

"Bullying" has the meaning assigned by Education Code 37.0832. [See FFI]

"Cyberbullying" has the meaning assigned by Education Code 37.0832. [See FFI]

"Harassment" has the meaning assigned by Education Code 37.001. [See FO]

"Sexual conduct" has the meaning assigned by Penal Code 43.25.

Programs

The Texas School Safety Center, in consultation with the office of the attorney general, shall develop programs for use by school districts that address:

1. The possible legal consequences, including criminal penalties, of sharing visual material depicting a minor engaged in sexual conduct;
2. Other possible consequences of sharing visual material depicting a minor engaged in sexual conduct, including:
    a. Negative effects on relationships;
    b. Loss of educational and employment opportunities; and
    c. Possible removal, if applicable, from certain school programs or extracurricular activities;
3. The unique characteristics of the Internet and other communications networks that could affect visual material depicting a minor engaged in sexual conduct, including:
    a. Search and replication capabilities; and
    b. Potentially worldwide audience;
4. The prevention of, identification of, responses to, and reporting of incidents of bullying; and
5. The connection between bullying, cyberbullying, harassment, and a minor sharing visual material depicting a minor engaged in sexual conduct.

A district shall annually provide or make available information on these programs to parents and students in a grade level the district considers appropriate. Each district shall provide or make available the information by any means the district considers appropriate.

Education Code 37.218

Note: See policies DHB and DHC for information on other required reports regarding alleged misconduct against a student.

The District shall notify a parent of a student with whom a District employee or a person acting as a service provider for the District is alleged to have engaged in misconduct, informing the parent:

1. As soon as feasible that the alleged misconduct may have occurred;
2. Whether the individual was terminated following an investigation of the alleged misconduct or resigned before completion of the investigation; and
3. Whether a report was submitted to the Texas Education Agency or State Board for Educator Certification concerning the alleged misconduct.

For purposes of this policy, misconduct is defined as an individual's alleged abuse or commission of an otherwise unlawful act with a student or involvement in a romantic relationship, or soliciting or engaging in sexual contact with a student.

Notice of Suspected Criminal Offense

Except as provided by state law regarding child abuse investigations, the District shall notify a parent not later than one business day after the date an employee first suspects that a criminal offense has been committed against the parent's child.

[See also FFG for reporting requirements related to child abuse and FFH for parental notification requirements regarding prohibited conduct as defined by that policy.]

Policy and Program to Address Sexual Abuse, Trafficking, and Maltreatment

A district shall provide child abuse antivictimization programs in elementary and secondary schools. *Education Code 38.004*

A district shall adopt and implement a policy addressing sexual abuse, sex trafficking, and other maltreatment of children, to be included in the district improvement plan [see BQ] and any information handbook provided to students and parents. *Education Code 38.0041(a)*

The policy included in any informational handbook provided to students and parents must address the following:

1. Methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;
2. Actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and
3. Available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

19 TAC 103.1401(b)(3)

Definitions

Child Abuse

"Abuse" includes the following acts or omissions by a person:

1. Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
2. Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
3. Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
4. Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

5. Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or disabled individual under Penal Code 21.02, indecency with a child under Penal Code 21.11, improper relationship between educator and student under Penal Code 21.12, sexual assault under Penal Code 22.011, or aggravated sexual assault under Penal Code 22.021;

6. Failure to make a reasonable effort to prevent sexual conduct harmful to a child;

7. Compelling or encouraging the child to engage in sexual conduct as defined by Penal Code 43.01, compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Penal Code 20A.02(a)(7) or (8), solicitation of prostitution under Penal Code 43.021, or compelling prostitution under Penal Code 43.05(a)(2);

8. Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Penal Code or pornographic;

9. The current use by a person of a controlled substance as defined by Health and Safety Code Chapter 481, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

10. Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Health and Safety Code Chapter 481;

11. Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Penal Code 43.25;

12. Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Penal Code 20A.02(a)(5), (6), (7), or (8), or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or

13. Forcing or coercing a child to enter into a marriage.

Abuse does not include the refusal by a person responsible for a child's care, custody, or welfare to affirm a child's perception of the child's gender, including a refusal to use a child's preferred name

or pronouns, regardless of whether the child's name has been legally changed or to affirm a child's expressed sexual orientation.

Neglect

"Neglect" means an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety.

Neglect includes:

1. The leaving of a child in a situation where the child would be exposed to an immediate danger of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

2. The following acts or omissions by a person:

    a. Placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or an immediate danger of harm to the child;

    b. Failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

    c. The failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

    d. Placing a child in or failing to remove the child from a situation in which the child would be exposed to an immediate danger of sexual conduct harmful to the child; or

    e. Placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse as defined above at items 5-9 committed against another child;

3. The failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason,

including having been in residential placement or having run away; or

4. A negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.

Neglect does not include:

1. The refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:
   a. The child has a severe emotional disturbance;
   b. The person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
   c. The person has exhausted all reasonable means available to the person to obtain the mental health services described at item b, above;
2. Allowing the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture; or
3. A decision by a person responsible for a child's care, custody, or welfare to:
   a. Obtain an opinion from more than one medical provider relating to the child's medical care;
   b. Transfer the child's medical care to a new medical provider;
   c. Transfer the child to another health care facility;
4. The refusal by a person responsible for a child's care, custody, or welfare to administer or consent to the administration of a psychotropic medication to the child, or to consent to any other psychiatric or psychological treatment of the child, unless the refusal presents a substantial risk of death, disfigurement, or bodily injury to the child or results in an observable and material impairment to the growth, development, or functioning of the child;

5. Choosing a recognized alternative health-care treatment or therapy for the child that could be considered as new, emerging, or nonstandard, unless the treatment or therapy presents a substantial risk of death, disfigurement, or bodily injury to the child or results in an observable and material impairment to the growth, development, or functioning of the child; or

6. The refusal by a person responsible for a child's care, custody, or welfare to affirm a child's perception of the child's gender, including a refusal to use a child's preferred name or pronouns, regardless of whether the child's name has been legally changed or to affirm a child's expressed sexual orientation.

Family Code 261.001(1), (1-a), (4)

Other Maltreatment

This term has the meaning assigned by Human Resources Code 42.002.

Trafficking of a Child

The definition of child abuse or neglect includes the trafficking of a child in accordance with Education Code 38.004.

19 TAC 103.1401(a)

Duty to Report

Report by Any Person

Any person who has reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as required by law. *Family Code 261.101(a)*

Report by Any Professional

Any professional who has reasonable cause to believe that a child has been or may be abused or neglected shall make a report as required by law. The report must be made within 24 hours after the professional first has reasonable cause to believe that the child has been or may be abused or neglected or is the victim of an offense of indecency with a child.

A professional may not delegate to or rely on another person to make the report.

A "professional" is a person who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, juvenile probation officers, and juvenile detention or correctional officers.

Family Code 261.101(b)

Abuse of Persons with Disabilities

A person having cause to believe that a person with a disability is in a state of abuse, neglect, or exploitation shall report the information immediately to the Texas Department of Family and Protective Services (DFPS).

A person commits a Class A misdemeanor if the person has cause to believe that a person with a disability has been abused, neglected, or exploited or is in a state of abuse, neglect, or exploitation and knowingly fails to report.

A person filing a report or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of his or her petition, report, testimony, or participation, unless the person acted in bad faith or with a malicious purpose.

Human Resources Code 48.051, .052, .054

Adult Victims of Abuse

A person or professional shall make a report in the manner required above if the person or professional has reasonable cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of another child or an elderly person or person with a disability. *Family Code 261.101(b-1)*

Restrictions on Reporting

Psychotropic Drugs and Psychological Testing

An employee may not use or threaten to use the refusal of a parent, guardian, or managing or possessory conservator to administer or consent to the administration of a psychotropic drug to a child, or to consent to any other psychiatric or psychological testing or treatment of the child, as the sole basis for making a report of neglect, unless the employee has cause to believe that the refusal:

1. Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
2. Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Education Code 26.0091; Family Code 261.111(a) [See FFEB]

Contents of Report

The report should reflect the reporter's belief that a child has been or may be abused or neglected or has died of abuse or neglect. The individual making the report shall identify, if known:

1. The name and address of the child;
2. The name and address of the person responsible for the care, custody, or welfare of the child;

3. The facts that caused the individual to believe the child has been abused or neglected and the source of the information;

4. The individual's name and telephone number;

5. The individual's:

   a. Home address; or

   b. If the individual is a professional as defined by Family Code 261.101(b) [see Report by Any Professional, above], the individual's business address and profession; and

6. Any other pertinent information concerning the alleged or suspected abuse or neglect.

Family Code 261.102, .104

Confidentiality of Report

A report of alleged or suspected abuse or neglect and the identity of the person making the report is confidential and not subject to release under Government Code Chapter 552 (Public Information Act) and may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by an investigating agency. *Family Code 261.201(a)-(a)(1)*

Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only to a law enforcement officer for the purposes of a criminal investigation of the report, or as ordered by a court under Family Code 261.201. *Family Code 261.101(d)*

Abuse and Neglect Involving School Personnel and Those Responsible for Care

If the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child, the report must be made to DFPS, unless the report is made to a state agency under item 4, below, or the report involves a juvenile justice program or facility [see JJAEPS, below].

All other reports shall be made to:

1. A law enforcement agency;

2. DFPS, Child Protective Services (CPS) Division;

3. A local office of CPS, where available; or

4. The state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred.

Family Code 261.103(a); 19 TAC 103.1401(b)(1)-(2)

"Law enforcement agency" means:

1. The Department of Public Safety;
2. The police department of a municipality;
3. The sheriff's office of a county; or
4. A constable's office of a county.

Family Code 261.001(3-a)

"Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

1. A parent, guardian, managing or possessory conservator, or foster parent of the child;
2. A member of the child's family or household as defined by Family Code Chapter 71;
3. A person with whom the child's parent cohabits;
4. School personnel or a volunteer at the child's school;
5. Personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides; or
6. An employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Human Resources Code Chapter 42.

Family Code 261.001(5)

Reporting Abuse, Neglect, or Exploitation in a JJAEP

Any report of alleged abuse, neglect, or exploitation, as those terms are defined in Family Code 261.405, in a juvenile justice program or facility shall be made to the Texas Juvenile Justice Department and a local law enforcement agency for investigation. The term "juvenile justice program" includes a juvenile justice alternative education program. *Family Code 261.405(a)(4)(A), (b)*

Immunity from Liability

A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from any civil or criminal liability that might otherwise be incurred or imposed. *Family Code 261.106*

A district may not suspend or terminate the employment of, or otherwise discriminate against, or take any other adverse employment

action against a professional who makes a good faith report of abuse or neglect. *Family Code 261.110(b)* [See DG]

Criminal Offenses

Failure to Report

A person commits a Class A misdemeanor if he or she is required to make a report under Family Code 261.101(a) [see Duty to Report, above] and knowingly fails to make a report as provided by law.

A person who is a professional commits a Class A misdemeanor if the person is required to make a report under Family Code 261.101(b) [see Duty to Report] and knowingly fails to make a report as provided by law. The professional commits a state jail felony if he or she intended to conceal the abuse or neglect.

Family Code 261.109

False Report

A person commits an offense if, with the intent to deceive, the person knowingly makes a report of abuse and neglect that is false. The offense is a state jail felony, except that it is a felony of the third degree if the person has previously been convicted of the offense. *Family Code 261.107(a)*

Coercion

A public servant, including as a school administrator, who coerces another into suppressing or failing to report child abuse or neglect to a law enforcement agency commits a Class C misdemeanor offense. *Penal Code 39.06*

Civil Liability

A school district that is grossly negligent or reckless, or engages in intentional misconduct, in hiring, supervising, or employing a professional school employee is liable for an act or omission that is committed by the employee against a student enrolled in the school and that is failure to report suspected child abuse or neglect under Family Code 261.101 [see Duty to Report, above]. *Civil Practice and Remedies Code 118.001*

SBEC Disciplinary Action

The State Board for Educator Certification (SBEC) may take any of the actions listed in 19 Administrative Code 249.15(a) (impositions, including revocation of a certificate and administrative penalties) based on satisfactory evidence that the person has failed to report or has hindered the reporting of child abuse pursuant to Family Code 261.001, or has failed to notify the SBEC, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by Education Code 22A.051, 22A.052, 22A.301, and 19 Administrative Code 249.14(d)-(f). *19 TAC 249.15(b)(4)*

Note: The following legal provisions address child abuse and neglect investigations generally. See GRA for additional legal provisions addressing notification requirements and right of access to students when DFPS investigates reports of abuse and neglect at school. See 40 Administrative Code Chapter 707, Subchapter B for more information regarding investigations of abuse or neglect in a school setting.

Investigations

Reports to District

If DFPS initiates an investigation and determines that the abuse or neglect involves an employee of a public elementary or secondary school, and that the child is a student at the school, the department shall orally notify the superintendent of the district in which the employee is employed. *Family Code 261.105(d)*

On request, DFPS shall provide a copy of the completed report of its investigation to the board, the superintendent, and the school principal, unless the principal is alleged to have committed the abuse or neglect. The report shall be edited to protect the identity of the person who made the report. *Family Code 261.406(b)*

Interview of Student

The investigating agency shall be permitted to interview the child at any reasonable time and place, including at the child's school. *Family Code 261.302(b)* [See GRA]

Interference with Investigation

A person may not interfere with an investigation of a report of child abuse or neglect conducted by DFPS. *Family Code 261.303(a)*

Confidentiality

A photograph, videotape, audiotape, or other audio or visual recording, depiction, or documentation of a child that is made by DFPS in the course of an inspection or investigation is confidential, is not subject to release under the Public Information Act, and may be released only as required by state or federal law or rules adopted by the DFPS. *Human Resources Code 42.004*

Reporting Policy

A board shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements of Family Code Chapter 261. *19 TAC 103.1401(b)*

The policies must require every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect to submit a written or oral report to at least one of the authorities listed above [see To Whom Reported, above] within 24 hours or less, as determined by the board, after learning of facts giving rise to the suspicion. *19 TAC 103.1401(b)(1)*

The policies must be consistent with the Family Code Chapter 261 and 40 Administrative Code Chapter 700 (CPS) regarding investigations by DFPS, including regulations governing investigation of abuse by school personnel and volunteers. [See GRA]

The policies must require a report to DFPS if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

1. Penalties under Penal Code 39.06 (misuse of official information), Family Code 261.109 (failure to report), and 19 Administrative Code Chapter 249 (actions against educator's certificate) for failure to submit a required report of child abuse or neglect;

2. Applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including:

    a. Family Code 261.302 and 261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

    b. Family Code 261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator.

3. Immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

4. Oral reports made to DFPS are recorded;

5. Confidentiality provisions relating to a report of suspected child abuse or neglect, including the following:

    a. The requirement for the individual making the report to provide his or her name and telephone number;

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

    c. The limited circumstances under which the identity of the individual making a report may be disclosed;

6. Any disciplinary action that may result from noncompliance with a district's reporting policy; and

7. The prohibition under Education Code 26.0091 [see Psychotropic Drugs and Psychological Testing, above].

19 TAC 103.1401(b)(2)

The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator before making a report to one of the agencies listed above.

The policies must:

1. Include the current toll-free number for DFPS;
2. Provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by DFPS; and
3. Include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

19 TAC 103.1401(b)(5)-(8)

Annual Distribution and Staff Development

The policies required by these provisions and adopted by the board shall be distributed to all personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by a board. *19 TAC 103.1401(c)* [See also DH and GRA]

[For training requirements under these provisions, see DMA.]

Required Poster

Using a format and language that is clear, simple, and understandable to students, each public school shall post, in English and in Spanish:

1. The current toll-free DFPS Abuse Hotline telephone number;
2. Instructions to call 911 for emergencies; and
3. Directions for accessing the DFPS Texas Abuse Hotline website[1] for more information on reporting abuse, neglect, and exploitation.

A district shall post the information specified above at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Pro-

tective Services Abuse Hotline telephone number should be in bold print.

Education Code 38.0042; 19 TAC 103.1401(e)-(f)

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[1] Texas Abuse Hotline website: https://www.txabusehotline.org/

Program to Address Child Sexual Abuse, Trafficking, and Maltreatment

The District's program to address child sexual abuse, trafficking, and other maltreatment of children, as included in the District improvement plan and the student handbook, shall include:

1. Methods for increasing staff, student, and parent awareness regarding these issues, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;
2. Age-appropriate, research-based antivictimization programs for students;
3. Actions that a child who is a victim should take to obtain assistance and intervention; and
4. Available counseling options for affected students.

Training

The District shall provide training to employees as required by law and District policy. Training shall address techniques to prevent and recognize sexual abuse, trafficking, and all other maltreatment of children, including children with significant cognitive disabilities. [See DMA]

[See BBD for Board member training requirements and BJCB for Superintendent continuing education requirements.]

Reporting Child Abuse and Neglect

Any person who has reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect has a legal responsibility, under state law, to immediately report the suspected abuse or neglect to an appropriate authority.

As defined in state law, child abuse and neglect include both sex and labor trafficking of a child.

The following individuals have an additional legal obligation to submit a written or oral report within 24 hours of learning of the facts giving rise to the suspicion of abuse or neglect:

1. Any District employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect.
2. A professional who has reasonable cause to believe that a child has been or may be abused or neglected or may have been a victim of indecency with a child. A professional is anyone licensed or certified by the state who has direct contact with children in the normal course of duties for which the individual is licensed or certified.

A person is required to make a report if the person has reasonable cause to believe that an adult was a victim of abuse or neglect as a

child and the person determines in good faith that disclosure of the information is necessary to protect the health and safety of another child or an elderly or disabled person.

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

Oral Reports

As required by law, an oral report made to the Texas Department of Family and Protective Services (DFPS) is recorded.

Restrictions on Reporting

In accordance with law, an employee is prohibited from using or threatening to use a parent's refusal to consent to administration of a psychotropic drug or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, unless the employee has cause to believe that the refusal:

1. Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
2. Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Making a Report

Reports may be made to any of the following:

1. A law enforcement agency, as defined in law;
2. The Child Protective Services (CPS) division of DFPS at 800-252-5400 or the Texas Abuse Hotline website[1];
3. A local CPS office; or
4. If applicable, the state agency operating, licensing, certifying, or registering the facility in which the suspected abuse or neglect occurred.

However, if the suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child, the report must be made to DFPS, unless the report is to the state agency that operates, licenses, certifies, or registers the facility where the suspected abuse or neglect took place; or the report is to the Texas Juvenile Justice Department as a report of suspected abuse or neglect in a juvenile justice program or facility. As defined by law, a person responsible for the care, custody, or welfare of a child includes school personnel and volunteers and day-care workers. [See FFG(LEGAL)]

An individual does not fulfill his or her responsibilities under the law by only reporting suspicion of abuse or neglect to a campus principal, school counselor, or another District staff member. Furthermore, the District is prohibited from requiring an employee to first report his or her suspicion to a District or campus administrator.

In accordance with law, an individual must provide their name and telephone number when making a report. If the individual making the report is a school employee, agent, or contractor, they must also provide their business address and profession.

Confidentiality

The identity of a person making a report of suspected child abuse or neglect shall be kept confidential and disclosed only in accordance with the law and the rules of the investigating agency.

Immunity

A person who in good faith reports or assists in the investigation of a report of child abuse or neglect is immune from civil or criminal liability.

Failing to Report Suspected Child Abuse or Neglect

By failing to report suspicion of child abuse or neglect, an employee:

1. May be placing a child at risk of continued abuse or neglect;
2. Violates the law and may be subject to legal penalties, including criminal sanctions for knowingly failing to make a required report;
3. Violates Board policy and may be subject to disciplinary action, including possible termination of employment; and
4. May have his or her certification from the State Board for Educator Certification suspended, revoked, or canceled in accordance with 19 Administrative Code Chapter 249.

It is a criminal offense to coerce someone into suppressing or failing to report child abuse or neglect.

Responsibilities Regarding Investigations

In accordance with law, District officials shall be prohibited from:

1. Denying an investigator's request to interview a child at school in connection with an investigation of child abuse or neglect;
2. Requiring that a parent or school employee be present during the interview; or
3. Coercing someone into suppressing or failing to report child abuse or neglect.

District personnel shall cooperate fully and without parental consent, if necessary, with an investigation of reported child abuse or neglect. [See GKA]

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[1] Texas Abuse Hotline website: http://www.txabusehotline.org

Table of Contents

Dating Violence....2
Policy Requirements....2
Student Resources....2
Sexual Harassment....2
Civil Liability....3
Designation of Title IX Coordinator....4
Parties Entitled to Notice....4
Reporting....4
Notification of Policy....5
Publication Requirements....5
Adopting and Publishing Complaint Procedures....5
Response to Sexual Harassment....6
Title IX Coordinator Response....8
Process for Title IX Formal Complaint....9
Recordkeeping....17
Retaliation Prohibited....17
Confidentiality....18

Note: The following legal provisions address dating violence and sexual harassment. For legal provisions addressing discrimination on the basis of disability, sex, and other protected characteristics, see FB.

Dating Violence

A district shall adopt and implement a dating violence policy to be included in the district improvement plan.

Policy Requirements

A dating violence policy must include:

1. A definition of dating violence that includes the intentional use of physical, sexual, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person in a dating relationship, as defined by Family Code 71.0021;
2. A clear statement that dating violence is not tolerated at school; and
3. Reporting procedures and guidelines for students who are victims of dating violence, including a procedure for immediately notifying the parent or guardian of a student about a report received by the district identifying the student as an alleged victim or perpetrator of dating violence.

A dating violence policy must also address safety planning, enforcement of protective orders, school-based alternatives to protective orders, training for teachers and administrators at each district campus that instructs students in grade 6 or higher, counseling for affected students, and awareness education for students and parents.

Education Code 37.083, .0831 [See BQ]

Student Resources

To the extent possible, a district shall make available to students age-appropriate educational materials that include information on the dangers of dating violence and resources to students seeking help. *Education Code 37.0831(c)*

Sexual Harassment

A district may develop and implement a sexual harassment policy to be included in the district improvement plan. *Education Code 37.083* [See BQ]

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

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. *20 U.S.C. 1681 (Title IX)*

A district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX. *34 C.F.R. 106.45; 20 U.S.C. 1681* [See also FB regarding Title IX]

Civil Liability

A school district that is grossly negligent or reckless, or engages in intentional misconduct, in hiring, supervising, or employing a professional school employee is liable for an act or omission that is committed by the employee against a student enrolled in the school and that is sexual misconduct.

For purposes of this provision, "sexual misconduct" means sexual abuse or conduct described by Penal Code:

1. 20A.02 (trafficking of persons);
2. 21.02 (continuous sexual abuse of young child or disabled individual);
3. 21.07 (public lewdness);
4. 21.08 (indecent exposure);
5. 21.11 (indecency with a child);
6. 21.12 (improper relationship between educator and student);
7. 21.15 (invasive visual recording);
8. 21.16 (unlawful disclosure or promotion of intimate visual material);
9. 21.165 (possession or promotion of lewd visual material depicting child);
10. 21.17 (voyeurism);
11. 21.18 (sexual coercion);
12. 21.19 (bestiality);
13. 22.011 (sexual assault);
14. 22.012 (indecent assault);
15. 22.021 (aggravated sexual assault); and
16. 43.25 (sexual performance by a child).

For purposes of this provision, “professional school employee” includes:

1. A superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, school counselor, nurse, and teacher's aide employed by a district;
2. A teacher employed by a company that contracts with a district to provide the teacher's services to the school;
3. A student in an education preparation program participating in a field experience or internship;
4. A school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;
5. A member of the board; and
6. Any other person employed by the district whose employment requires certification and the exercise of discretion.

A district’s governmental immunity to suit and from liability is waived to the extent of liability created above.

The professional school employee who committed the act of failure to report must be named as a defendant. The employee may not assert official immunity in such an action.

Civil Practice and Remedies Code 118.001, .002, .006

Designation of Title IX Coordinator

A district must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX, which employee must be referred to as the “Title IX Coordinator.”

Parties Entitled to Notice

The district must notify applicants for admission and employment, students, parents or legal guardians, employees, and all professional organizations holding professional agreements with the district (“Parties Entitled to Notice”) of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.

34 C.F.R. 106.8(a)

Reporting

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report

may be made at any time (including during nonbusiness hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. *34 C.F.R. 106.8(a)*

Notification of Policy

A district must notify the Parties Entitled to Notice, above, that the district does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner. The notification must state that the requirement not to discriminate in the education program or activity extends to employment, and that inquiries about the application of Title IX to such district may be referred to the district's Title IX Coordinator, to the assistant secretary for civil rights of the Department of Education, or both. *34 C.F.R. 106.2(d), .8(b)(1)*

Publication Requirements

A district must prominently display the contact information required to be listed for the Title IX Coordinator and the nondiscrimination policy described at Notification of Policy, above, on its website, if any, and in each handbook that it makes available to the Parties Entitled to Notice, above.

A district must not use or distribute a publication stating that the district treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX.

34 C.F.R. 106.8(b)(2)

Note: To distinguish the process described below from the district's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of Title IX sexual harassment in an education program or activity and against a person in the United States as the district's "Title IX formal complaint process."

Adopting and Publishing Complaint Procedures

A district must adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and a Title IX formal complaint process that complies with 34 C.F.R. 106.45 for formal complaints as defined below.

A district must provide notice to the Parties Entitled to Notice, above, of the district's procedures and Title IX formal complaint process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the district will respond.

The requirements of this provision apply only to sex discrimination occurring against a person in the United States.

34 C.F.R. 106.8(c)-(d)

Response to Sexual Harassment

Definitions

"Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to a district's Title IX Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the district with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the district. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"Consent" is not defined by the Title IX regulations, nor do the regulations require districts to adopt a particular definition of consent with respect to sexual assault.

"Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the district. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the district) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party to a Title IX formal complaint, and must comply with the requirements of the Title IX formal complaint process, including the informal resolution process.

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

"Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or

3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

"Supportive measures" means nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or district-provided housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

34 C.F.R. 106.2, .30(a)

Deliberate Indifference

A district with actual knowledge of sexual harassment in an education program or activity of the district against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A district is deliberately indifferent only if its response to

sexual harassment is clearly unreasonable in light of the known circumstances.

Education Program or Activity

For the purposes of 34 C.F.R. 106.30 [see Definitions, above] and 106.45 [see Process for Title IX Formal Complaint, below], "education program or activity" includes locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

34 C.F.R. 106.44(a)

Title IX Coordinator Response

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Title IX Coordinator must respond in this manner with or without a formal complaint. *34 C.F.R. 106.44(b)(1)*

Supportive Measures Required

A district's response must treat complainants and respondents equitably by offering supportive measures and by following a process that complies with 34 C.F.R. 106.45 [see Process for Title IX Formal Complaint, below] before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. [For Emergency Removal procedures, see below.]

Constitutional Restrictions

The Department of Education may not deem a district to have satisfied the district's duty to not be deliberately indifferent under Title IX based on the district's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

34 C.F.R. 106.44(a)

Response to a Formal Complaint

In response to a formal complaint, a district must follow a process that complies with 34 C.F.R. 106.45 [see Process for Title IX Formal Complaint, below]. *34 C.F.R. 106.44(b)(1)*

Emergency Removal

The Title IX regulations do not preclude a district from removing a respondent from the district's education program or activity on an emergency basis, provided that the district:

1. Undertakes an individualized safety and risk analysis;
2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and

3. Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

34 C.F.R. 106.44(c)

Administrative Leave

The Title IX regulations do not preclude a district from placing a nonstudent employee respondent on administrative leave during the pendency of a Title IX formal complaint. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act. *34 C.F.R. 106.44(d)*

Process for Title IX Formal Complaint

For the purpose of addressing formal complaints of sexual harassment, a district's process must comply with the following requirements. Any provisions, rules, or practices other than those required by this provision that a district adopts as part of its process for handling formal complaints of sexual harassment must apply equally to both parties. *34 C.F.R. 106.45(b)*

A district's Title IX formal complaint process must:

1. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a process that complies with the Title IX regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the district's education program or activity. Such remedies may include the same individualized services described as supportive measures; however, remedies need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent;

2. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;

3. Require that any individual designated by a district as a Title IX Coordinator, investigator, decision-maker, or any person designated by a district to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A district must ensure that Title IX Coordinators, investigators, decision-makers, and any person

who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and Title IX formal complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A district must ensure that decision-makers receive training on any technology to be used at a live hearing, if any, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. [See Hearings, below] A district also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. [See Investigation of a Formal Complaint, below] Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

4. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process;

5. Include reasonably prompt time frames for conclusion of the Title IX formal complaint process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the district offers informal resolution processes, and a process that allows for the temporary delay of the Title IX formal complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

6. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the district may implement following any determination of responsibility;

7. State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the

same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;

8. Include the procedures and permissible bases for the complainant and respondent to appeal;

9. Describe the range of supportive measures available to complainants and respondents; and

10. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

34 C.F.R. 106.45(b)(1)

Notice of Allegations

Upon receipt of a formal complaint, a district must provide the following written notice to the parties who are known:

1. Notice of the district's Title IX formal complaint process, including any informal resolution process.

2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:

   a. The identities of the parties involved in the incident, if known;

   b. The conduct allegedly constituting sexual harassment; and

   c. The date and location of the alleged incident, if known.

   The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and may inspect and review evidence [see Investigation of a Formal Complaint, below]. The written notice must inform the parties of any provision in the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the Title IX formal complaint process.

If, in the course of an investigation, the district decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations, above, the district must provide notice of the additional allegations to the parties whose identities are known.

34 C.F.R. 106.45(b)(2)

Dismissal of a Formal Complaint

The district must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the district's education program or activity, or did not occur against a person in the United States, then the district must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of the district's code of conduct.

The district may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the district; or specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted pursuant to 34 C.F.R. 106.45(b)(3), the district must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Consolidation of Formal Complaints

A district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a Title IX formal complaint process involves more than one complainant or more than one respondent, references in this provision to the singular "party," "complainant," or "respondent" include the plural, as applicable.

34 C.F.R. 106.45(b)(3)-(4)

Investigation of a Formal Complaint

When investigating a formal complaint and throughout the Title IX formal complaint process, a district must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the district and not on the parties provided that the district cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physi-

cian, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the district obtains that party's voluntary, written consent to do so for a Title IX formal complaint (if a party is not an "eligible student," as defined in 34 C.F.R. 99.3 then the district must obtain the voluntary, written consent of a "parent," as defined in 34 C.F.R. 99.3) [see FL(LEGAL) at Education Records];

2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

4. Provide the parties with the same opportunities to have others present during any Title IX formal complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or Title IX formal complaint proceeding; however, the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the district does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the district must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will

consider prior to completion of the investigative report. The district must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

7. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 C.F.R. 106.45(b)(5)

Hearings

The district's Title IX formal complaint process may, but need not, provide for a hearing. With or without a hearing, after the district has sent the investigative report to the parties pursuant to 34 C.F.R. 106.45(b)(5)(vii) [see Investigation of a Formal Complaint, above] and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant. *34 C.F.R. 106.45(b)(6)(ii)*

Determination Regarding Responsibility

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the district must apply the standard of evidence described at Process for Title IX Formal Complaint, above.

The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment;

2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and wit-

nesses, site visits, methods used to gather other evidence, and hearings held;

3. Findings of fact supporting the determination;

4. Conclusions regarding the application of the district's code of conduct to the facts;

5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant; and

6. The district's procedures and permissible bases for the complainant and respondent to appeal.

The district must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

34 C.F.R. 106.45(b)(7)(i)-(ii)

Implementation of Remedies

The Title IX Coordinator is responsible for effective implementation of any remedies. *34 C.F.R. 106.45(b)(7)(iv)*

Appeals

A district must offer both parties an appeal from a determination regarding responsibility, and from a district's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;

2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A district may offer an appeal equally to both parties on additional bases.

As to all appeals, the district must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

3. Ensure that the decision-maker(s) for the appeal complies with the standards in the Title IX regulations regarding conflict of interest and bias [see Process for Title IX Formal Complaint, item 3, above];

4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

5. Issue a written decision describing the result of the appeal and the rationale for the result; and

6. Provide the written decision simultaneously to both parties.

34 C.F.R. 106.45(b)(8)

Informal Resolution

A district may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with Title IX. Similarly, a district may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the district:

1. Provides to the parties a written notice disclosing:

   a. The allegations;

   b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX formal complaint process with respect to the formal complaint; and

   c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

2. Obtains the parties' voluntary, written consent to the informal resolution process; and

3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

34 C.F.R. 106.45(b)(9)

Recordkeeping

A district must maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity;

2. Any appeal and the result therefrom;

3. Any informal resolution and the result therefrom; and

4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A district must make these training materials publicly available on its website or if the district does not maintain a website the district must make these materials available upon request for inspection by members of the public.

For each response required under Title IX Coordinator Response, above, a district must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the district must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the district's education program or activity.

If a district does not provide a complainant with supportive measures, then the district must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the district in the future from providing additional explanations or detailing additional measures taken.

34 C.F.R. 106.45(b)(10)

Retaliation Prohibited

No district or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated

or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Complaints alleging retaliation may be filed according to the Process for Title IX Formal Complaint above.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX formal complaint proceeding does not constitute retaliation prohibited by Title IX, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

34 C.F.R. 106.71(a)-(b)

Confidentiality

The district must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 C.F.R. 106.71(a)*

Table of Contents

Education Records....2
"Education Records" Defined....2
Screening Records....2
Immunization Records....3
Medical Records....3
Vital Statistics Records....3
Food Allergy Information....3
Assessment Instruments....4
Academic Achievement Record (Grades 9-12)....4
Enrollment Records....4
Access, Disclosure, and Amendment....4
Definitions....4
Disclosure With Consent....6
Access by Parents....6
Access by Student....7
Disclosure Without Consent....7
Subpoenaed Records....11
Sex Offenders....12
Request Procedure....12
Records Destruction....12
De-Identified Records....13
Authenticating Requestors' Identities....13
Transfer Not Permitted....13
Record of Access to Student Records....14
Right to Amend....15
Fees for Copies....15
Records of Students with Disabilities....15
Annual Notification of Rights....16
Directory Information....17
"Directory Information" Defined....17
Videotapes and Recordings....21
My Texas Future Admissions Data Sharing....21
Records Requests Under Education Savings Account Program....22

Note: For information regarding law enforcement and schools, see GRAA. For information regarding juvenile law enforcement records, see GBA.

Education Records

"Education Records" Defined

For the purposes of this policy, the term "education records" means those records, files, documents, and other materials that contain information directly related to a student and are maintained by an education agency or institution or by a person acting for such agency or institution.

The term "education records" does not include:

1. Records that are created or received by a district after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
2. Records made by district personnel that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to anyone other than a temporary substitute for the maker of the record.
3. Records maintained by a law enforcement unit of a district that were created by that law enforcement unit for the purpose of law enforcement.
4. Records on a student who is 18 years of age or older, or who is attending an institution of postsecondary education, that are:
    a. Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
    b. Made, maintained, or used only in connection with treatment of the student; and
    c. Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.
5. Grades on peer-graded papers before they are collected and recorded by a teacher.

20 U.S.C. 1232g; 34 C.F.R. 99.3

Screening Records

The principal of each school shall maintain records of screening for special senses and communication disorders, spinal screening,

and assessment for type 2 diabetes for each student in the school. Records shall be open for inspection by the state or local health department. *20 U.S.C. 1232g; Health and Safety Code 36.006, 37.003, 95.004; 25 TAC 37.145(b)* [See FFAA]

Immunization Records

A district shall maintain an individual immunization record during the period of attendance for each student admitted. The records shall be open for inspection at all reasonable times by the Texas Education Agency (TEA) or by representatives of local health departments or the Texas Department of State Health Services. A district shall cooperate with other districts in transferring students' immunization records between other schools. Specific approval from students, parents, or guardians is not required prior to making such record transfers. *Education Code 38.002* [See FFAB]

Medical Records

The parent or guardian of a student is entitled to access to the student's medical records maintained by a district. On request of a student's parent or guardian, a district shall provide a copy of the student's medical records to the parent or guardian. A district may not impose a charge that exceeds the amount authorized by Section 552.261 of the Government Code [see GBAA]. *Education Code 38.0095*

Privacy Rule for Non-"Education Records"

To the extent a district is a covered entity under the Health Insurance Portability and Accountability Act (HIPAA), the district must comply with the Privacy Rule, 45 C.F.R. Part 164, with respect to protected health information that is not an education record. *45 C.F.R. 160.103, 164.501* [See CRD]

Vital Statistics Records

If the district collects vital statistics information that identifies the sex of a person for the purpose of complying with antidiscrimination laws or for the purpose of gathering public health, crime, economic, or other data, the district shall identify each person as either male or female. *Gov't Code 2051.252*

Food Allergy Information

Information regarding a child's food allergy, regardless of how it is received by the school or school district, shall be retained in the child's student records but may not be placed in the health record maintained for the child by the district.

Exceptions

If the school receives documentation of a food allergy from a physician, that documentation shall be placed in the health record maintained for the child by the district.

A registered nurse may enter appropriate notes about a child's possible food allergy in the health record maintained for the child by the district, including a notation that the child's student records

indicate that a parent has notified the district of the child's possible food allergy. [See FD]

Education Code 25.0022(d)-(f)

Assessment Instruments

The results of individual student performance on basic skills assessment instruments or other achievement tests administered by a district are confidential and may be made available only to the student, the student's parent or guardian, and to the school personnel directly involved with the student's educational program. However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and district, and made available to the public, with appropriate interpretations, at regularly scheduled board meetings. The information may not contain the names of individual students or teachers. *Education Code 39.030(b)* [See EKB]

Academic Achievement Record (Grades 9-12)

Following guidelines developed by the commissioner of education, a district must use an academic achievement record (transcript) form that includes student demographics, school data, student data, and the record of courses and credits earned. The academic achievement record shall serve as the academic record for each student and must be maintained permanently by the district. A district must ensure that copies of the record are made available for a student transferring from one district to another. To ensure appropriate placement of a transfer student, a district must respond promptly to each request for student records from a receiving district. *19 TAC 74.5(b)-(c)* [See EI]

Enrollment Records

For information on enrollment records, see FD.

Access, Disclosure, and Amendment

Definitions

Attendance

"Attendance" includes, but is not limited to:

1. Attendance in person or by paper correspondence, videoconference, satellite, internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and
2. The period during which a person is working under a work-study program.

Authorized Representative

"Authorized representative" means any entity or individual designated by a state or local educational authority or an agency headed by an official listed in 34 C.F.R. 99.31(a)(3) to conduct—with respect to federal- or state-supported education programs—any audit, evaluation, or any compliance or enforcement activity in connection with federal legal requirements that relate to these programs.

Biometric Record "Biometric record" means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual (e.g., fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting).

Disclosure "Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

Education Program "Education program" means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution.

Parent "Parent" includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

Personally Identifiable Information "Personally identifiable information" includes, but is not limited to:

1. The student's name;
2. The name of the student's parent or other family members;
3. The address of the student or student's family;
4. A personal identifier, such as the student's social security number, student number, or biometric record;
5. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
6. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
7. Information requested by a person who the district reasonably believes knows the identity of the student to whom the education record relates.

Record "Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

34 C.F.R. 99.3

Signed and Dated Written Consent

"Signed and dated written consent" may include a record and signature in electronic form that:

1. Identifies and authenticates a particular person as the source of the electronic consent; and
2. Indicates such person's approval of the information contained in the electronic consent.

34 C.F.R. 99.30(d)

Disclosure With Consent

The parent or eligible student shall provide a signed and dated written consent before a district discloses personally identifiable information from a student's education records, except as provided by 34 C.F.R. 99.31. The written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the part or class or parties to whom the disclosure may be made.

When a disclosure is made under written consent, if a parent or eligible student requests, the district shall provide a copy of the records disclosed and if the parent of a student who is not an eligible student requests, the district shall provide the student with a copy of the records disclosed.

34 C.F.R. 99.30(a)-(c)

[For more information related to required consent for the release of certain medical or biometric information, see FFA.]

Access by Parents

A district shall give full rights under these provisions to either parent, unless the district has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights. *34 C.F.R. 99.4*

A court may order the custodian of records to delete all references in a child's records to the place of residence of either party appointed as conservator before their release to another party appointed as conservator. *Family Code 153.012*

A parent is entitled to access to all written records of a district concerning the parent's child, including attendance records, test scores, grades, disciplinary records, counseling records, psychological records, applications for admission, medical records in accordance with Education Code 38.0095, including health and immunization information, teacher and school counselor evaluations, reports of behavioral patterns, records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child, and records

relating to library materials checked out by the child from a school library.

"Intervention strategy" means a strategy in a multi-tiered system of supports that is above the level of intervention generally used in that system with all children. The term includes response to intervention and other early intervening strategies.

Education Code 26.004

If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student. *34 C.F.R. 99.12(a)*

Access by Student

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education. *34 C.F.R. 99.*3

When a student becomes an eligible student, the rights accorded to, and consent required of, parents under these provisions transfer from the parents to the student.

Nothing in this provision prevents a district from disclosing education records, or personally identifiable information from education records, to a parent without prior written consent of an eligible student if the disclosure meets the conditions in 34 C.F.R. 99.31(a), including if the student is a dependent for tax purposes or in the case of a health or safety emergency.

34 C.F.R. 99.5, .31(a)(8), (a)(10), .36

Disclosure Without Consent

Personally identifiable information in education records shall not be released without the written consent of the student's parents, except to the following.

School Officials

School officials, including teachers, who have legitimate educational interests.

A contractor, consultant, volunteer, or other party to whom a district has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party:

1. Performs an institutional service or function for which the district would otherwise use employees;

2. Is under the direct control of the district with respect to the use and maintenance of education records; and

3. Is subject to the requirements of 34 C.F.R. 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

A district must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. A district that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement.

34 C.F.R. 99.31(a)(1)

An administrator, nurse, or teacher is entitled to access to a student's medical records maintained by a district for reasons determined by district policy. *Education Code 38.009*

Officials of Other Schools

Officials of educational agencies or institutions, including officials of another school or institution of postsecondary education in which the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer, provided that a district shall:

1. Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

    a. The disclosure is initiated by the parent or eligible student; or

    b. The annual notification under 34 C.F.R. 99.7 includes a notice that the district forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll or is already enrolled so long as the disclosure is for the purposes related to the student's enrollment or transfer;

2. Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

3. Give the parent or eligible student, upon request, an opportunity for a hearing under 34 C.F.R. Part 99, Subpart C.

34 C.F.R. 99.31(a)(2), .34

Authorized Government Representatives

Authorized representatives of the officials or agencies headed by the Comptroller General of the United States, the Attorney General of the United States, the Secretary of Education, or state and local educational authorities who require access to student or other

records necessary in connection with the audit and evaluation of federal- or state-supported education programs or in connection with the enforcement of or compliance with federal legal requirements that relate to such programs. *34 C.F.R. 99.35(a)(1)*

A district may not refuse to report information concerning a student holding an F, J, or M visa on the basis of the Family Educational Rights and Privacy Act (FERPA) and any regulation implementing FERPA. A district is authorized and required to report information that would ordinarily be protected by FERPA only to the extent required by 8 U.S.C. 1372, 8 C.F.R. 214.3(g), or any corresponding regulation. *8 C.F.R. 214.1(h); 8 U.S.C. 1372(c)(2)*

Financial Aid Personnel

Personnel involved with a student's application for, or receipt of, financial aid. *34 C.F.R. 99.31(a)(4)(i)*

Juvenile Justice Officials

State and local officials to whom such information is specifically allowed to be reported or disclosed by state statute if:

1. The allowed reporting or disclosure concerns the juvenile justice system and its ability to effectively serve, prior to adjudication, the student whose records are released; and
2. The officials and authorities to whom such information is disclosed certify in writing to the district that the information will not be disclosed to any other party except as provided under state law without the prior written consent of the parent of the student.

34 C.F.R. 99.31(a)(5)(i), .38

A school district superintendent or the superintendent's designee shall disclose information contained in a student's educational records to a juvenile service provider as required by Family Code 58.0051 [see GRAC]. *Education Code 37.084(a)*

Organizations Conducting Studies

Organizations conducting studies for, or on behalf of, districts for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction. Such studies must be conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate interests in the information. Such information must be destroyed when no longer needed for the original purposes of the studies.

The district must enter into a written agreement with the organization that:

1. Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;

2. Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement;

3. Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in this part, by anyone other than representatives of the organization with legitimate interests; and

4. Requires the organization to destroy all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be destroyed.

A district that enters into an agreement with an organization conducting a study may redisclose personally identifiable information from education records on behalf of educational agencies and institutions that disclosed the information to the district in accordance with the requirements of 34 C.F.R. 99.33(b).

A district is not required to initiate a study or agree with or endorse the conclusions or results of the study.

34 C.F.R. 99.31(a)(6)(i)-(iv)

Accrediting Organizations — Accrediting organizations to carry out their accrediting functions. *34 C.F.R. 99.31(a)(7)*

Health or Safety Emergency — Appropriate parties, including the student's parents, in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of the student or other individuals.

In making a determination, a district may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the district determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the United States Department of Education (U.S. ED) will not substitute its judgment for that of the district in evaluating the circumstances and making its determination.

34 C.F.R. 99.31(a)(10), .36(a),(c)

Agriculture Secretary — The Secretary of Agriculture, or authorized representative from the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of

districts receiving funding or providing benefits of programs authorized under the National School Lunch Act or the Child Nutrition Act [see COB] for which the results will be reported in an aggregate form, on the conditions as follows:

1. Any data collected under this paragraph shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the United Stated Secretary of Education; and

2. Any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements.

20 U.S.C. 1232g(b)(1)(K)

Child Welfare Agency

An agency caseworker or other representative of a state or local child welfare agency or tribal organization, who has the right to access a student's case plan, as defined and determined by the state or tribal organization, when the agency or organization is legally responsible, in accordance with state or tribal law, for the care and protection of the student. Education records, or the personally identifiable information contained in such records, of the student shall not be disclosed by the agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by the agency or organization to receive the disclosure. A disclosure must be consistent with state or tribal laws applicable to protecting the confidentiality of a student's education records. *20 U.S.C. 1232g(b)(1)(L)*

Directory Information

Any person requesting directory information after a district has given public notice of that definition. [See Directory Information, below] *34 C.F.R. 99.37*

Subpoenaed Records

A district shall release student records in compliance with a judicial order, or pursuant to any lawfully issued subpoena, except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act [42 U.S.C. 5101 note]) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required. *20 U.S.C. 1232g(b)(1)(J), (b)(2)(B)*

The educational agency or institution may disclose information under this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with:

1. A federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

2. Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

3. An ex parte court order obtained by the United States attorney general (or designee not lower than an assistant attorney general) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

If the district initiates legal action against a parent or student, the district may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the district to proceed with the legal action as plaintiff.

If a parent or eligible student initiates legal action against a district, the district may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the district to defend itself.

34 C.F.R. 99.31(a)(9)

Sex Offenders

A district may disclose personally identifiable information without consent if the disclosure concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, and the information was provided to the district under 42 U.S.C. 14071 and applicable federal guidelines. *34 C.F.R. 99.31(a)(16)*

Request Procedure

Upon request of a properly qualified individual, access to a student's education record shall be granted within a reasonable period of time, but not more than 45 days after it has received the request. A district shall respond to reasonable requests for explanations and interpretations of the records. *34 C.F.R. 99.10*

Records Destruction

A district shall not destroy any education records if there is an outstanding request to inspect and review the records. *34 C.F.R. 99.10(e)*

De-Identified Records

A district, or a party that has received education records or information from education records, may release the records or information without the parent's written consent after the removal of all personally identifiable information provided that the district or other party has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple

releases, and taking into account other reasonably available information. *34 C.F.R. 99.31(b)(1)*

Education Research

A district, or a party that has received education records or information from education records, may release de-identified student level data from education records for the purpose of education research by attaching a code to each record that may allow the recipient to match information received from the same source, provided that:

1. A district or other party that releases de-identified data under this section does not disclose any information about how it generates and assigns a record code, or that would allow a recipient to identify a student based on a record code;
2. The record code is used for no purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain personally identifiable information about a student; and
3. The record code is not based on a student's social security number or other personal information.

34 C.F.R. 99.31(b)(2)

Authenticating Requestors' Identities

A district must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the district discloses personally identifiable information from education records. *34 C.F.R. 99.31(c)*

Transfer Not Permitted

Personal information from student education records shall be transferred to a third party only on the condition that such party will not permit any other party to have access to such information without the written consent of the student's parent. If a third party permits access to information in violation of this policy or fails to destroy the information as required by 20 U.S.C. 1232g(b)(1)(F), a district shall not permit access to information from education records to that third party for a period of not less than five years. *20 U.S.C. 1232g(b)(4)(B); 34 C.F.R. 99.33(a)(1)*

A district shall inform a party to whom a disclosure is made of the requirements of 34 C.F.R. 99.33, unless the disclosure is made pursuant to a court order, lawfully issued subpoena, or litigation; the disclosed information is directory information; the disclosure concerns sex offenders; or the disclosure is made to a parent of a student who is not an eligible student or to a student. *34 C.F.R. 99.33(c)-(d)*

A district may disclose personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the district if:

1. The disclosures meet the requirements of 34 C.F.R. 99.31; and

2. The district has complied with the requirements of 34 C.F.R. 99.32(b) regarding the record of disclosure; or a state or local educational authority or federal official or agency listed requesting information through a subpoena or ex parte order has complied with the requirements of 34 C.F.R. 99.32(b)(2).

34 C.F.R. 99.33(b)

Record of Access to Student Records

Each school shall maintain a record, kept with the education record of each student that indicates all individuals, agencies, or organizations that have requested or obtained access to a student's education records, as well as the names of state and local educational authorities and federal officials and agencies listed in 34 C.F.R. 99.31(a)(3) that may make further disclosures of personally identifiable information from the student's education records without consent. A district must obtain a copy of the record of further disclosures maintained by the named authorities, officials, and agencies under 34 C.F.R. 99.32(b)(2) and make it available in response to a parent's request to review the record.

A district must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception [see Health or Safety Emergency, above]:

1. The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and

2. The parties to whom the district disclosed the information.

34 C.F.R. 99.32

The records shall include at least the name of the person or agency that made the request and the legitimate interest the person or agency had in the information. The record will be maintained as long as the district maintains the student's education record. The record of access shall be available only to parents, school officials responsible for custody of the records, and those state, local, and federal officials authorized to audit the operation of the system. *20 U.S.C. 1232g(b)(4)(A); 34 C.F.R. 99.33(a)(2)*

The record shall not include requests for access by, or access granted to, parents of the student or officials of a district, requests accompanied by prior written consent of the parent, requests for directory information, or a party seeking or receiving records in accordance with a subpoena or ex parte order. *34 C.F.R. 99.32(d)*

Right to Amend

The parent of a student whose records are covered by this policy may ask a district to amend the student's record if the parent believes it contains information that is inaccurate, misleading, or in violation of the student's right of privacy or other rights. If a district decides not to amend the education records requested, it shall inform the parent of its decision and his or her right to a hearing to challenge the content of the student's education records. *34 C.F.R. 99.20*

If a district decides to amend the records as a result of the hearing, it shall inform the parent in writing. If, as a result of the hearing, the district decides not to amend the records, it shall inform the parent of the right to place a statement in the records commenting on the contested information and/or stating why the parent disagrees with the decision of the district. Any explanation shall be maintained with the contested part of the record for as long as the record is maintained and shall be disclosed whenever the contested portion of the record is disclosed. *34 C.F.R. 99.21*

Fees for Copies

No fee shall be charged to search for or to retrieve the education records of a student. A fee may be charged for a copy of education records which is made for the parent or an eligible student, unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review those records. *20 U.S.C. 1232g; 34 C.F.R. 99.11; Education Code 26.012*

Records of Students with Disabilities

A district shall permit parents to inspect and review education records collected, maintained, or used for purposes of identifying, evaluating, placing, or educating students with disabilities. *34 C.F.R. 300.613(a)*

Access Rights

In addition to policies applicable to all student records, the following guidelines shall apply when parents of a student with disabilities request to review or inspect district records relating to the education of their child:

1. Parents may request that a representative inspect and review the records. *34 C.F.R. 300.613(b)(3)*

2. A district shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program (IEP) or hearing relating to the identification,

evaluation, or placement of the child, and in no case longer than 45 days after the request. *34 C.F.R. 300.613(a)*

3. A district shall keep a record of persons obtaining access to these student records (except access by parents and authorized employees), including name, date of access, and the purpose for which the person is authorized to use the records. *34 C.F.R. 300.614*

Record Types and Locations — A district shall provide parents on request a list of types and locations of education records. *34 C.F.R. 300.616*

Parental Consent — Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. A district may not release information from these records without parental consent except as provided in FERPA. *34 C.F.R. 300.622*

Confidentiality — A district shall protect the confidentiality of personally identifiable information in collection, storage, disclosure, and destruction of records. One official in a district shall assume responsibility for ensuring confidentiality of personally identifiable information. All persons collecting or using this information shall receive training or instruction concerning the legal requirements involved in handling these records. A district shall maintain for public inspection a current listing of the names and positions of employees who may have access to this information. *34 C.F.R. 300.623*

Information Destruction — A district shall inform parents when personally identifiable information collected, maintained, or used to provide special education and related services is no longer needed to provide educational services to the student. Such information shall be destroyed at the request of the parents.

A permanent record of the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

34 C.F.R. 300.624

Annual Notification of Rights — A district shall give parents of students in attendance and eligible students in attendance annual notification of their rights under FERPA.

The notice must inform parents or eligible students that they have the right to:

1. Inspect and review the student's education records;
2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
3. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and 34 C.F.R. 99.31 authorize disclosure without consent; and
4. File with the U.S. ED a complaint under 34 C.F.R. 99.63 and 99.64 concerning alleged failures by the district to comply with the requirements of the Act and 34 C.F.R. Part 99.

The notice must include all of the following:

1. The procedure for exercising the right to inspect and review education records.
2. The procedure for requesting amendment of records under 34 C.F.R. 99.20.
3. If the district has a policy of disclosing education records under 34 C.F.R. 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

A district may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

A district shall effectively notify parents who are disabled and parents of students who have a primary or home language other than English.

20 U.S.C. 1232g(e); 34 C.F.R. 99.7

Directory Information

"Directory Information" Defined

"Directory information" means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information includes the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, dates of attendance, grade level, enrollment status, participation in officially recognized activities and sports, weight and height of members of athletic teams, honors and awards received, and the most recent educational agency or institution attended. "Directory information" does not include a student's:

1. Social security number; or
2. Student identification (ID) number, unless:

a. The student ID number, user ID number, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user; or

b. The student ID number or other unique personal identifier that is displayed on a student ID badge cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.

34 C.F.R. 99.3

Disclosure of Directory Information

A district may release directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the district of:

1. The types of personally identifiable information that it has designated as directory information.

2. A parent's or eligible student's right to refuse to let the district designate any or all of those types of information about the student as directory information.

3. The period of time within which the parent has to notify the district in writing that he or she does not want any or all of those types of information about the student designated as directory information.

Restrictions on the Right of Refusal

A parent or eligible student may not use the right of refusal to opt out of directory information disclosures to prevent a district from disclosing or requiring a student to disclose the student's name, identifier, or institutional email address in a class in which the student is enrolled or to prevent a district from requiring a student to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that may be designated as directory information and that has been properly designated by the district as directory information in the public notice provided under this section.

Former Students

A district may disclose directory information about former students without satisfying the public notice conditions above. However, the district must continue to honor any valid request to opt out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt-out request.

Confirmation of Identity or Records

A district may not disclose or confirm directory information without meeting the written consent requirements in 34 C.F.R. 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.

34 C.F.R. 99.3, .37

Homeless Students

Information about a homeless child's living situation shall be treated as a student education record, and shall not be deemed to be directory information. *42 U.S.C. 11432(g)(3)(G)*

Directory Information Designation

A district may designate as directory information any or all information defined as directory information by FERPA. Directory information under that Act that is not designated by a district as directory information for that district is excepted from disclosure by the district under Government Code Chapter 552 (Public Information Act). [See GBA]

Directory information consented to by a parent for use only for a limited school-sponsored purpose, such as for a student directory, student yearbook, or district publication, if any such purpose has been designated by a district, remains otherwise confidential and may not be released under Government Code Chapter 552.

Annual Notice

A district shall provide the following to the parent of each district student, at the beginning of each school year or on enrollment of the student after the beginning of the school year:

1. A written explanation of the provisions of FERPA regarding the release of directory information about the student; and
2. Written notice of the right of the parent to object to the release of directory information about the student under FERPA.

Contents

The notice must contain:

1. The following statement in boldface type that is 14-point or larger: "Certain information about district students is considered directory information and will be released to anyone who follows the procedures for requesting the information unless the parent or guardian objects to the release of the directory information about this student. If you do not want [insert name of district] to disclose directory information from your child's education records without your prior written consent, you must notify the district in writing by [insert date]. [Insert name of district] has designated the following information as directory information: [Here the district must include any directory information it chooses to designate as directory information for the district, such as a student's name, address, telephone

listing, electronic mail address, photograph, degrees, honors, and awards received, date and place of birth, major field of study, dates of attendance, grade level, most recent education institution attended, participation in officially recognized activities and sports, and the weight and height of members of athletic teams.]";

2. A form, such as a check-off list or similar mechanism, that:

   a. Immediately follows, on the same page or the next page, the required statement; and

   b. Allows a parent to record:

      (1) The parent's objection to the release of all directory information or one or more specific categories of directory information if district policy permits the parent to object to one or more specific categories of directory information;

      (2) The parent's objection to the release of a secondary student's name, address, and telephone number to a military recruiter or institution of higher education; and

      (3) The parent's consent to the release of one or more specific categories of directory information for a limited school-sponsored purpose if such purpose has been designated by the district and is specifically identified, such as for a student directory, student yearbook, or district publication; and

3. A statement that federal law requires districts receiving assistance under the Elementary and Secondary Education Act of 1965 to provide a military recruiter or an institution of higher education, on request, with the name, address, or telephone number of a secondary student unless the parent has advised the district that the parent does not want the student's information disclosed without the parent's prior written consent.

Education Code 26.013

Student Recruiting Information

Notwithstanding the Directory Information provisions above, each district receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA) shall provide, on a request made by a military recruiter or an institution of higher education, access to secondary school students' names, addresses, and telephone listings unless a student's parent has submitted the prior consent request below.

Consent to Release

A student who has attained 18 years of age or a parent of a secondary school student may submit a written request to a district that the student's name, address, and telephone listing not be released for purposes described above without prior written consent. Upon receiving such request, a district may not release the student's name, address, and telephone listing for such purposes without the prior written consent of the parent or student. A district shall notify parents of the option to make a request.

No Opt-In Process

Nothing in this provision shall be construed to allow a district to withhold access to a student's name, address, and telephone listing from a military recruiter or institution of higher education by implementing an opt-in process or any other process other than the written consent request process above.

20 U.S.C. 7908

A district shall:

1. Provide to military recruiters the same access to secondary school students as is provided generally to postsecondary educational institutions or to prospective employers of those students; and

2. Upon a request made by military recruiters for military recruiting purposes, provide access to secondary school student names, addresses, electronic mail addresses (which shall be the electronic mail addresses provided by the school, if available), and telephone listings, notwithstanding directory information requirements in FERPA [see above].

A district shall notify parents of their right to submit a request to the district that the student's name, address, electronic mail address, and telephone listing not be released.

10 U.S.C. 503(c)(1)(A)-(B) [See also GKC]

Videotapes and Recordings

For information about videotaping or audio recording a child, see FA.

My Texas Future Admissions Data Sharing

Except as provided below, before graduating from high school, each student must elect whether to opt in to allowing the Texas Higher Education Coordinating Board (THECB) to share the student's data and education records, as necessary, with institutions of higher education to allow the student to participate in the direct admissions program established by the THECB.

A student is not required to elect whether to opt in if:

1. The student's parent submits a signed form indicating that the parent authorizes the student to decline to complete and submit information necessary to participate in the program;

2. The student signs and submits the form described above on the student's own behalf if the student is 18 years of age or older or the student's disabilities of minority have been removed for general purposes under Family Code Chapter 31; or

3. A school counselor authorizes in writing the student to decline to complete and submit the information necessary to participate in the program.

A school district shall use a form adopted by the THECB, in consultation with TEA, to allow a student to opt out. The form shall provide the student or the student's parent, as applicable, the opportunity to elect whether to share the student's data or education records, as necessary, with institutions of higher education to facilitate the student's participation in the program. A district shall make the form available in English, Spanish, and any other language spoken by a majority of the students enrolled in a bilingual education or special language program under Education Code Chapter 29, Subchapter B in the district.

Education Code 28.0257

Records Requests Under Education Savings Account Program

On request by a parent participating in or who wishes to participate in the education savings account program established by Education Code Chapter 29, Subchapter J, a district that a child would otherwise attend shall provide a copy of the child's school records possessed by the district, if any, to the child's parent or, if applicable, the private school the child attends.

As necessary to verify a child's eligibility for the education savings account program, a district shall provide to a certified educational assistance organization, as defined by Education Code 29.351, any information available to the district requested by the organization regarding a child who participates or seeks to participate in the program, including information regarding the child's district enrollment status and whether the child can be counted toward a school district's average daily attendance for purposes of the allocation of funding under the Foundation School Program.

Education Code 29.369

Table of Contents

UIL Rules and District Policies....3
Athletic Activities....3
UIL Forms....3
Notices....3
Records....3
Unsafe Practices....3
Safety Precautions....4
Concussions....4
Football Helmet Safety Requirements....7
Steroid Testing....7
Cardiac Assessment....8
Safety of Official....8
Interscholastic Athletic Competition Based on Biological Sex....9
Water Activities....9
Definitions....9
Parent Affirmation....9
Flotation Device Required....10
Failure to Comply....10
Rodeos....10
Educational Program....10
Restriction on Participation....11
Protective Gear for Bull Riding....11
Eligibility....11
Military Dependents....11
Attendance and Participation....11
SBOE Rules....11
Extracurricular Activities....12
Exceptions....12
Limits on Participation and Practice....12
Record of Absences....13
Students Receiving Outpatient Mental Health Services....13
Participation by Homeschooled Students....14
Suspension from Extracurricular Activities....17
Length of Suspension....17

Grade Evaluation Period....17
School Week....17
Exempt Courses....18
Students with Disabilities....18
Practice or Rehearsal....18
Reinstatement....18
Suspension for Certain Conduct Involving Extracurricular Officials....19
Spectator Suspension....19
Parental Notice and Consent....20
Anonymous Evaluations....20
Videotaping and Recording....20
Discriminatory Club....20
Special Olympics Recognition....20
Student Election Clerks....20
Before-School and After-School Programs....21

UIL Rules and District Policies

A student enrolled in a district or who participates in an extracurricular activity or a University Interscholastic League (UIL) competition is subject to district policy and UIL rules regarding participation only when the student is under the direct supervision of an employee of the school or district in which the student is enrolled or at any other time specified by resolution of a board. *Education Code 33.081(b)* [See FO regarding additional standards of conduct for extracurricular activities]

Athletic Activities

UIL Forms

Each student participating in an extracurricular athletic activity must complete the UIL forms entitled "Preparticipation Physical Evaluation — Medical History" and "Acknowledgement of Rules." Each form must be signed by both the student and the student's parent or guardian. *Education Code 33.203(a)*

Notices

Each school that offers an extracurricular athletic activity shall:

1. Prominently display at its administrative offices the telephone number and electronic mail address that the commissioner of education maintains for reporting violations of Education Code Chapter 33, Subchapter F; and
2. Provide each student participant and the student's parent or guardian a copy of the text of Education Code 33.201-33.207 and a copy of the UIL's parent information manual. The document may be provided in an electronic format unless otherwise requested.

Education Code 33.207(b), .208

Records

A superintendent shall maintain complete and accurate records of the district's compliance and the district shall make available to the public proof of compliance for each person enrolled in the district who is required to receive safety training.

A campus that is determined by the superintendent to be out of compliance with the safety training requirements or the requirements regarding unsafe practices and safety precautions (see below) shall be subject to the range of penalties determined by the UIL.

Education Code 33.206

Unsafe Practices

A coach, trainer, or sponsor for an extracurricular athletic activity may not encourage or permit a student participant to engage in any unreasonably dangerous athletic technique that unnecessarily endangers the health of a student, including using a helmet or any other sports equipment as a weapon. *Education Code 33.204*

Safety Precautions

A coach, trainer, or sponsor for an extracurricular athletic activity shall at each athletic practice or competition ensure that:

1. Each student participant is adequately hydrated;
2. Any prescribed asthma medication for a student participant is readily available to the student;
3. Emergency lanes providing access to the practice or competition area are open and clear; and
4. Heatstroke prevention materials are readily available.

If a student participating in a practice or competition becomes unconscious during the activity, the student may not:

1. Return to the activity during which the student became unconscious; or
2. Participate in any extracurricular athletic activity until the student receives written authorization for such participation from a physician.

Education Code 33.205

Concussions

"Interscholastic athletic activity" includes practice and competition, sponsored or sanctioned by a district, including a home-rule district, or a public school, including any school for which a charter has been granted under Education Code Chapter 12, or the UIL. *Education Code 38.152*

"Concussion" means a complex pathophysiological process affecting the brain caused by a traumatic physical force or impact to the head or body, which may include temporary or prolonged altered brain function resulting in physical, cognitive, or emotional symptoms or altered sleep patterns, and involve loss of consciousness. *Education Code 38.151(4)*

Concussion Oversight Team

The board of a district with students enrolled who participate in an interscholastic athletic activity shall appoint or approve a concussion oversight team. *Education Code 38.153(a)*

Each concussion oversight team must include at least one physician and, to the greatest extent practicable, considering factors including the population of the metropolitan statistical area in which the district is located, district enrollment, and the availability of and access to licensed health-care professionals in the district or charter school area, must also include one or more of the following: an athletic trainer, an advanced practice nurse, a neuropsychologist, or a physician assistant. If a district employs an athletic trainer, the athletic trainer must be a member of the concussion oversight

team. If a district employs a school nurse, the school nurse may be a member of the district concussion oversight team if requested by the school nurse.

A district may include a licensed chiropractor or physical therapist as a member of the district concussion oversight team, provided that the person meets the training requirements.

Education Code 38.154

Training Requirements

Each member of the concussion oversight team must have had training in the evaluation, treatment, and oversight of concussions at the time of appointment or approval as a member of the team. The members also must take a training course at least once every two years and submit proof of timely completion to the superintendent or designee in accordance with Education Code 38.158. *Education Code 38.154(c), .158(f)*

A school nurse or licensed health-care professional who is not in compliance with these training requirements may not serve on a concussion oversight team in any capacity. *Education Code 38.158(g)*

Return-to-Play Protocol

Each concussion oversight team shall establish a return-to-play protocol, based on peer-reviewed scientific evidence, for a student's return to interscholastic athletics practice or competition following the force or impact believed to have caused a concussion. *Education Code 38.153(b)*

Required Annual Form

A student may not participate in an interscholastic athletic activity for a school year until both the student and the student's parent or guardian or another person with legal authority to make medical decisions for the student have signed a form for that school year that acknowledges receiving and reading written information that explains concussion prevention, symptoms, treatment, and oversight and that includes guidelines for safely resuming participation in an athletic activity following a concussion. The form must be approved by the UIL. *Education Code 38.155*

Removal from Play

A student shall be removed from an interscholastic athletics practice or competition immediately if one of the following persons believes the student might have sustained a concussion during the practice or competition: a coach; a physician; a licensed health-care professional, as defined by Education Code 38.151(5); a licensed chiropractor or physical therapist; a school nurse; or the student's parent or guardian or another person with legal authority to make medical decisions for the student. *Education Code 38.156*

Return to Play

A student removed from an interscholastic athletics practice or competition under Education Code 38.156 may not be permitted to

practice or compete again following the force or impact believed to have caused the concussion until:

1. The student has been evaluated, using established medical protocols based on peer-reviewed scientific evidence, by a treating physician chosen by the student or the student's parent or guardian or another person with legal authority to make medical decisions for the student;

2. The student has successfully completed each requirement of the return-to-play protocol established under Education Code 38.153 necessary for the student to return to play;

3. The treating physician has provided a written statement indicating that, in the physician's professional judgment, it is safe for the student to return to play; and

4. The student and the student's parent or guardian or another person with legal authority to make medical decisions for the student have acknowledged that the student has completed the requirements of the return-to-play protocol necessary for the student to return to play, have provided the treating physician's written statement to the person responsible for compliance with the return-to-play protocol and the person who has supervisory responsibilities, and have signed a consent form indicating that the person signing:

    a. Has been informed concerning and consents to the student participating in returning to play in accordance with the return-to-play protocol;

    b. Understands the risks associated with the student returning to play and will comply with any ongoing requirements in the return-to-play protocol;

    c. Consents to the disclosure to appropriate persons, consistent with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, of the treating physician's written statement and, if any, the return-to-play recommendations of the treating physician; and

    d. Understands the immunity provisions under Education Code 38.159.

A coach of an interscholastic athletics team may not authorize a student's return to play.

The superintendent or designee shall supervise an athletic trainer or other person responsible for compliance with the return-to-play

protocol. The person who has supervisory responsibilities may not be a coach of an interscholastic athletics team.

Education Code 38.157

Immunity

These provisions do not:

1. Waive any immunity from liability of a district or of district officers or employees;
2. Create any liability for a cause of action against a district or against district officers or employees;
3. Waive any immunity from liability under Civil Practice and Remedies Code 74.151; or
4. Create any cause of action or liability for a member of a concussion oversight team arising from the injury or death of a student participating in an interscholastic athletics practice or competition, based on service or participation on the concussion oversight team.

Education Code 38.159

[For information regarding concussions sustained in an activity other than an interscholastic athletic activity or for academic accommodations available to students with a concussion, see FFAC.]

Football Helmet Safety Requirements

A district may not use a football helmet that is 16 years old or older in the district's football program. A district shall ensure that each football helmet used in the district's football program that is 10 years old or older is reconditioned at least once every two years.

A district shall maintain and make available to parents of students enrolled in the district documentation indicating the age of each football helmet used in the district's football program and the dates on which each helmet is reconditioned.

Education Code 33.094(a)-(c)

Steroid Testing

The UIL shall adopt rules for the annual administration of a steroid testing program under which high school students participating in an athletic competition sponsored or sanctioned by the league are tested at multiple times throughout the year for the presence of steroids [see FNF].

Results of such steroid tests are confidential and, unless required by court order, may be disclosed only to the student and the student's parent and the activity directors, principal, and assistant principals of the school attended by the student.

Education Code 33.091(d)-(e)

Cardiac Assessment

A district must provide a district student who is required under UIL rule or policy to receive a physical examination before being allowed to participate in an athletic activity sponsored or sanctioned by the UIL, information about sudden cardiac arrest and electrocardiogram testing and notification of the option of the student to request the administration of an electrocardiogram, in addition to the physical examination.

A student may request an electrocardiogram from any health-care professional, including a health-care professional provided through a district program, provided that the health-care professional is appropriately licensed in Texas and authorized to administer and interpret electrocardiograms under the health-care professional's scope of practice, as establish by the health-care professional's Texas licensing act.

Immunity

These provisions do not create a cause of action or liability or a standard of care, obligation, or duty that provides a basis for a cause of action or liability against a health-care professional described in the provision, the UIL, a district, or a district officer or employee for:

1. The injury or death of a student participating in or practicing for an athletic activity sponsored or sanctioned by the UIL based on or in connection with the administration or interpretation of or reliance on an electrocardiogram; or
2. The content or distribution of the information required under these provisions or the failure to distribute the required information.

Education Code 33.096

Safety of Official

A district that holds an extracurricular athletic activity or a UIL athletic competition on district property shall provide a peace officer, a school resource officer, an administrator, or security personnel to ensure the safety of a referee, judge, or other official of the activity or competition until the official departs district property if:

1. A participant or spectator of the activity or competition engages in, attempts to engage in, or threatens violent conduct against the official or otherwise disrupts the duties or free movement of the official; or
2. The district reasonably suspects that an incident described above may occur at the activity or competition.

Education Code 33.099

[For information regarding the suspension of an individual who causes bodily injury to an official, see Suspension for Certain Conduct Involving Extracurricular Officials and Spectator Suspension, below.]

Interscholastic Athletic Competition Based on Biological Sex

An interscholastic athletic team sponsored or authorized by a district may not allow a student to compete in an interscholastic athletic competition sponsored or authorized by the district that is designated for the biological sex opposite to the student's biological sex as correctly stated on the student's official birth certificate, as described below, or if the student's official birth certificate is unobtainable, another government record.

Exception

An interscholastic athletic team sponsored or authorized by a district may allow a female student to compete in an interscholastic athletic competition that is designated for male students if a corresponding interscholastic athletic competition designated for female students is not offered or available.

Birth Certificate Statement

For purposes of this provision, a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex only if the statement was entered at or near the time of the student's birth or modified to correct any type of scrivener or clerical error in the student's biological sex.

Education Code 33.0834

Water Activities

Definitions

“Body of water” means an artificial or natural body of water, including a swimming pool, lake, or river, typically used for recreational swimming, bathing, or play. The term does not include a wading pool.

“Child” means an individual younger than 12 years of age.

“Organized water activity” means an activity an organization conducts in which a participant will enter or travel on a body of water as part of the activity.

“Wading pool” means a pool, including a pool that contains a public interactive water feature and fountain as defined by department rule, with a maximum water depth of not more than 18 inches.

Parent Affirmation

An organization, including a school, that authorizes a child to engage in an organized water activity shall require the child’s parent or legal guardian to affirm in writing whether the child is able to swim or is at risk of injury or death when swimming or otherwise accessing a body of water.

Flotation Device Required

The organization shall provide to each child who is unable to swim or is at risk of injury or death when swimming or otherwise entering a body of water a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device or a device the executive commissioner of Texas Health and Human Services determines is equivalent. The organization shall ensure the child is wearing the personal flotation device and the device is properly fitted and fastened for the child.

The organization is not required to provide a child with a flotation device or ensure the child is wearing the device if the child is actively participating in swim instruction or a competition and the organization ensures each child participating in the instruction or a competition is closely supervised during the instruction or competition.

Failure to Comply

An organization that violates this provision or rules adopted under this provision is subject to disciplinary action.

Health and Safety Code 341.0646(a)-(e)

Rodeos

This section applies only to a primary or secondary school that sponsors, promotes, or otherwise is associated with a rodeo in which children who attend the school are likely to participate.

“Rodeo” means an exhibition or competition, without regard to whether the participants are compensated, involving activities related to cowboy skills, including:

1. Riding a horse, with or without a saddle, with the goal of remaining on the horse while it attempts to throw off the rider;
2. Riding a bull;
3. Roping an animal, including roping as part of a team;
4. Wrestling a steer; and
5. Riding a horse in a pattern around preset barrels or other obstacles.

Educational Program

A primary or secondary school to which this section applies shall, before the first rodeo associated with the school in each school year, conduct a mandatory educational program on safety, including the proper use of protective gear, for children planning to participate in the rodeo, in accordance with 25 Administrative Code 104.4. The educational program may consist of an instructional video, subject to the Department of State Health Services approval.

Restriction on Participation	A child may not participate in a rodeo associated with the child's school during a school year unless the child has completed the educational program not more than one year before the first day of the rodeo.
Protective Gear for Bull Riding	A child may not engage in bull riding, including engaging in bull riding outside a rodeo for the purpose of practicing bull riding, unless the child is wearing a protective vest and bull riding helmet in accordance with 25 Administrative Code 104.3.
	Health and Safety Code 768.001(6), .003; 25 TAC 104.2-.4
Eligibility	A student otherwise eligible to participate in an extracurricular activity or a UIL competition is not ineligible because the student is enrolled in a course offered for joint high school and college credit, or in a course offered under a concurrent enrollment program, regardless of the location at which the course is provided. *Education Code 33.087*
Military Dependents	The district shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified. *Education Code 162.002 art. VI, § B* [See FDD]
Attendance and Participation	The State Board of Education (SBOE) by rule shall limit participation in and practice for extracurricular activities during the school day and the school week. The board of a district may adopt a policy establishing the number of times a student who is otherwise eligible to participate in an extracurricular activity may be absent from class to participate in an extracurricular activity sponsored or sanctioned by the district, UIL, or an organization sanctioned by board resolution. The policy must permit a student to be absent from class at least 10 times during the school year, and the policy prevails over any conflicting policy adopted by the SBOE. *Education Code 33.081(a), .0811*
SBOE Rules	The following provisions apply to any UIL activity. Other organizations requiring student participation that causes a student to miss a class may request sanction from a board. If sanctioned by resolution of the board, student participation in the organization's activities shall be subject to all provisions of statute and to 19 Administration Code 76.1001. If a board does not grant sanction, any absences incurred by a student while participating with that organization's activities shall be subject to the attendance provisions of the Education Code. *19 TAC 76.1001(f)* [See FEB]

Extracurricular Activities

An extracurricular activity is an activity sponsored by the UIL, a board, or an organization sanctioned by board resolution. The activity is not necessarily directly related to instruction of the essential knowledge and skills but may have an indirect relation to some areas of the curriculum.

Extracurricular activities include, but are not limited to, public performances, contests, demonstrations, displays, and club activities. In addition, an activity is subject to this policy if any one of the following criteria applies:

1. The activity is competitive;
2. The activity is held in conjunction with another activity that is considered extracurricular;
3. The activity is held off-campus, except in a case in which adequate facilities do not exist on campus;
4. The general public is invited; or
5. An admission is charged.

Exceptions

Public Performances

A student ineligible to participate in an extracurricular activity, but who is enrolled in a state-approved course that requires demonstration of the mastery of the essential knowledge and skills in a public performance, may participate in the performance if:

1. The general public is invited; and
2. The requirement for student participation in public is stated in the essential knowledge and skills of the course.

State-Approved Music Courses

A student ineligible to participate in an extracurricular activity, but who is enrolled in a state-approved music course that participates in UIL Concert and Sight-Reading Evaluation, may perform with the ensemble during the UIL evaluation performance.

19 TAC 76.1001(a)

Limits on Participation and Practice

During the School Week

Limitations on practice, rehearsal, and student participation during the school week shall be as follows:

1. For any given extracurricular activity, a student may not participate in more than one activity per school week, excluding holidays, except as provided in item 2, below.
2. A student may also participate in a tournament or post-district contest, as well as a contest postponed by weather or public disaster that may determine advancement to a post-district level of competition.

3. For each extracurricular activity, a district must limit students to a maximum of eight hours of practice and rehearsal outside the school day per school week.

4. The commissioner recommends that districts avoid scheduling extracurricular activities or public performances on the day or evening immediately preceding the day on which the statewide student assessment program is scheduled for grades 3-11.

19 TAC 76.1001(d); Education Code 33.081(a)

During the School Day

Limitations on practice and rehearsal during the school day shall be as follows:

1. A district must limit a student to one period of practice during the regularly scheduled school day for practice of extracurricular activities, such as athletics, drill team, or cheerleading.

2. The limit in item 1 does not prohibit a student from enrolling in any state-approved class. A student who is enrolled in a state-approved class that includes essential knowledge and skills that relate to the preparation for an extracurricular activity may practice that extracurricular activity for no more than one period during the school day.

3. A student may not be permitted to miss a scheduled academic class to practice for an unrelated extracurricular activity.

4. A district must limit extracurricular practice during the school day to ensure that class periods for extracurricular practice do not exceed the time allotted for other class periods.

5. Regardless of the schedule type in place (traditional or nontraditional), a school may elect to practice extracurricular activities daily, provided the total minutes allowed for the extracurricular practice is not greater than 300 minutes during the school week.

19 TAC 76.1001(e); Education Code 33.081(a)

Record of Absences

A district shall maintain an accurate record of extracurricular absences for each student in the district each school year. *19 TAC 76.1001(c)*

Students Receiving Outpatient Mental Health Services

A district may not adopt or enforce policies that restrict participation in UIL activities by a student who receives outpatient mental health services from a mental health facility and is enrolled in the district or otherwise receives public education services from a district based solely on the student's receipt of outpatient mental health

services from a mental health facility or the student's absence during instructional time while receiving outpatient mental health services from a mental health facility.

This provision does not exempt a student to whom this section applies from any eligibility requirement for participation in UIL activities other than an eligibility requirement based solely on the criteria of receipt of outpatient mental health services from a mental health facility.

Education Code 33.0833(c)-(d)

Participation by Homeschooled Students

Except as provided below, a public school that participates in an activity sponsored by UIL shall provide a non-enrolled student, who otherwise meets UIL eligibility standards to represent that school in a UIL activity, with the opportunity to participate in the activity on behalf of the school in the same manner that the school provides the opportunity to participate to students enrolled in the school.

Not later than the date specified under UIL rule, the board may adopt a policy declining to grant non-enrolled students the opportunity to participate in UIL activities.

"Non-enrolled student" means a student who receives instruction as a homeschooled student as described by Education Code 29.916(a)(1) from a nonpublic school [see EK].

[For requirements specific to participation in Junior Reserve Officers' Training Corps by homeschooled students, see EEL.]

Relevant Policies

A non-enrolled student who seeks to participate or participates in a UIL activity on behalf of a school is subject to the following relevant policies that apply to students enrolled in the school:

1. Registration for UIL activities;
2. Age eligibility;
3. Fees;
4. Insurance;
5. Transportation;
6. Physical condition;
7. Qualifications;
8. Responsibilities;
9. Event schedules;
10. Standards of behavior; and

11. Performance.

Residency Requirements

Except as provided below, a non-enrolled student may only participate in a UIL activity for the school in the district that the student would be eligible to attend based on the student's residential address. A non-enrolled student who seeks to participate in a UIL activity on behalf of a school shall be required to establish minimum proof of residency acceptable to the district in the same manner as an applicant to attend a school in the district under Education Code 25.001 [see FD].

If the school that a non-enrolled student would be eligible to attend is subject to a policy declining to grant non-enrolled students the opportunity to participate in UIL activities, the student may participate in a UIL activity for the closest school, based on geographic proximity to the student's residential address, that is not subject to such a policy.

Academic Requirements

The parent or person standing in parental relation to a non-enrolled student is responsible for oversight of academic standards relating to the student's participation in a UIL activity. As a condition of eligibility to participate in a UIL activity during the first six weeks of a school year, a non-enrolled student must demonstrate grade-level academic proficiency on any nationally recognized, norm-referenced assessment instrument, such as the Iowa Test of Basic Skills, Stanford Achievement Test, California Achievement Test, or Comprehensive Test of Basic Skills. A non-enrolled student demonstrates the required academic proficiency by achieving a composite, core, or survey score that is within the average or higher than average range of scores, as established by the applicable testing service. A district shall accept assessment results administered or reported by a third party.

A non-enrolled student's demonstration of academic proficiency is sufficient for the school year in which the student achieves the required score and the subsequent school year.

After the first six weeks of a school year, the parent or person standing in parental relation to a non-enrolled student participating in a UIL activity on behalf of a public school must periodically, in accordance with the school's grading calendar, provide written verification to the school indicating that the student is receiving a passing grade in each course or subject being taught.

Previous Enrollment in Public School

A non-enrolled student is not authorized by this section to participate in a UIL activity during the remainder of any school year during which the student was previously enrolled in a public school.

Prohibitions

With respect to a non-enrolled student's education program, nothing in these provisions shall be construed to permit an agency of this state, a public school district, or any other governmental body to exercise control, regulatory authority, or supervision over a non-enrolled student or a parent or person standing in parental relation to a non-enrolled student beyond the control, regulatory authority, or supervision required to participate in a UIL activity.

Subject only to eligibility requirements, the curriculum or assessment requirements, performance standards, practices, or creed of the education program provided to a non-enrolled student may not be required to be changed in order for the non-enrolled student to participate in a UIL activity. Subject only to eligibility requirements, for a non-enrolled student participating in an education program on January 1, 2021, the education program provided to that student may not be required to comply with any state law or agency rule relating to that education program unless the law or rule was in effect on January 1, 2021.

UIL Classification

When assigning league classification to a public school based on student enrollment, the UIL must use the same student enrollment calculation formula for a school that allows a non-enrolled student to participate in a league activity as the formula used to determine the student enrollment of a school that does not allow a nonenrolled student to participate in the league activity.

Education Code 33.0832

UIL Allotment

For each nonenrolled student who participates in a UIL activity for a school in a district that allows participation of nonenrolled students, the district is entitled to an annual allotment of $1,500 per UIL activity in which the nonenrolled student participates. *Education Code 48.305*

Definitions

“Activity season” means the period established by a school or the UIL in which practices, rehearsals, and interschool competitions or contests take place.

“Nonenrolled student” means a student who predominantly receives instruction in a general elementary or secondary education program that is provided by the parent, or a person standing in parental authority, in or through the child’s home. This may include a student who is designated as enrolled, not in membership.

“Participation” means the active involvement of a student in a minimum of 75 percent of a combined total of practices, rehearsals, or preparation activities and associated competitions and contests, including selection as an alternate, for a specific UIL activity.

"University Interscholastic League or UIL activity" means any official UIL activity identified in the UIL Constitution and Contest Rules, not including pilot activities.

UIL activities shall:

1. Be overseen by a school district-approved coach or sponsor;
2. Provide for a minimum of four weeks of coach- or sponsor-led practice, rehearsal, or preparation specific to the activity within the designated activity season; and
3. Provide opportunities for students to take part in formal, interschool competitions or contests in the associated activity during the designated activity season.

A district may still receive the allotment if a student began the activity season without injury or illness and later experienced an injury or prolonged illness that prevented participation.

For audit purposes, a district shall maintain documentation to support the requirements of this provision.

A district will be provided with estimated funding during a school year for nonenrolled students in accordance with 19 Administrative Code 105.1031(g).

19 TAC 105.1031

Suspension from Extracurricular Activities

A student shall be suspended from participation in any extracurricular activity sponsored or sanctioned by a district or the UIL after a grade evaluation period in which the student received a grade lower than the equivalent of 70 on a scale of 100 in any academic class other than a course described below at Exempt Courses.

Length of Suspension

A suspension continues for at least three school weeks and is not removed during the school year until the conditions of Reinstatement, described below, are met. A suspension shall not last beyond the end of a school year.

Grade Evaluation Period

"Grade evaluation period" means:

1. The six-week grade reporting period; or
2. The first six weeks of a semester and each grade reporting period thereafter, in the case of a district with a grade reporting period longer than six weeks.

Education Code 33.081(c)

School Week

The school week is defined as beginning at 12:01 a.m. on the first instructional day of the calendar week and ending at the close of

instruction on the last instructional day of the calendar week, excluding holidays. *19 TAC 76.1001(b)*

Exempt Courses

The suspension and reinstatement provisions of Education Code 33.081(c) and (d) do not apply to an advanced placement or international baccalaureate course, or to an honors or dual credit course in the subject areas of English language arts, mathematics, science, social studies, economics, or a language other than English. *Education Code 33.081(d-1)*

Honors classes for purposes of eligibility to participate in extracurricular activities are listed at 19 Administrative Code 74.30(a).

Districts may identify additional honors courses in the subject areas of English language arts, mathematics, science, social studies, or a language other than English for the purposes of extracurricular eligibility but must identify such courses before the semester in which any exemptions related to extracurricular activities occur.

Districts are neither required to nor restricted from considering courses as honors for the purpose of grade point average calculation.

19 TAC 74.30

Students with Disabilities

In the case of a student with a disability that significantly interferes with the student's ability to meet regular academic standards, suspension must be based on the student's failure to meet the requirements of the student's individualized education program (IEP). The determination of whether the disability substantially interferes with the student's ability to meet the requirements of the student's IEP must be made by the admission, review, and dismissal (ARD) committee.

For the purposes of this provision, "student with a disability" means a student who is eligible for a district's special education program under Education Code 29.003(b).

Education Code 33.081(e)

Practice or Rehearsal

A student suspended under Education Code 33.081 may practice or rehearse with other students for an extracurricular activity but may not participate in a competition or other public performance. This provision does not apply to a student prohibited from participation for certain conduct involving extracurricular officials [see below]. *Education Code 33.081(f)*

Reinstatement

Until the suspension is removed or the school year ends, a district shall review the grades of a student at the end of each three-week period following the date on which the suspension began. At the

time of a review, the suspension is removed if the student's grade in each class, other than a course described above at Exempt Courses, is equal to or greater than the equivalent of 70 on a scale of 100. The principal and each of the student's teachers shall make the determination concerning the student's grades. *Education Code 33.081(d)*

Suspension for Certain Conduct Involving Extracurricular Officials

A student who is enrolled in a district in Texas or who participates in a UIL competition shall be prohibited from participation in any future extracurricular activity sponsored or sanctioned by the district or the UIL if the state executive committee of the league determines that the student intentionally, knowingly, or recklessly causes bodily injury to a person serving as referee, judge, or other official of an extracurricular activity in retaliation for or as a result of the person's actions taken in performing the duties of a referee, judge, or other official of the extracurricular activity.

Reinstatement After Conduct

A student prohibited from participation may submit to the UIL a request that the student be permitted to participate in future extracurricular activities sponsored or sanctioned by the UIL. The request must be submitted at least one year after the date the student engaged in the conduct that resulted in the prohibition if the student was enrolled in eighth grade or below at the time of the conduct or two years after the date the student engaged in the conduct that resulted in the prohibition if the student was enrolled in ninth grade or above at the time of the conduct.

Education Code 33.081(e-1)-(e-2)

Spectator Suspension

A district shall prohibit a spectator of an extracurricular athletic activity or competition, including a parent or guardian of a student participant, from attending any future extracurricular athletic activity or competition sponsored or sanctioned by the district or the UIL if the spectator engages in conduct that intentionally, knowingly, or recklessly causes bodily injury to a person serving as referee, judge, or other official of an extracurricular athletic activity or competition in retaliation for or as a result of the person's actions taken in performing the duties of a referee, judge, or other official of the extracurricular athletic activity or competition.

A district may establish an appeals process by which a person may appeal the prohibition to the district and the district may determine the facts associated with the conduct for which the district imposed the prohibition.

A prohibition imposed under this provision must be for not less than one year after the date on which the prohibition is imposed

but may not exceed five years from the date on which the prohibition is imposed.

Education Code 33.081(f-1)-(f-3)

Parental Notice and Consent

A parent is entitled to full information regarding the school activities of a parent's child except as provided by Education Code 38.004 (child abuse investigations). *Education Code 26.008(a)(1)*

Anonymous Evaluations

Anonymous evaluations of a student that determine whether the student may participate in a school-related program do not provide full information about the student's school activities. A district may by policy establish the parameters for parental contact with evaluating teachers, taking into account the type of evaluation, the information elicited in the evaluation, and scheduling and workload requirements of the teachers. *Byard v. Clear Creek Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 020-R5-1001 (June 17, 2002)*

Videotaping and Recording

A district employee or contractor is not required to obtain the consent of a child's parent before the employee or contractor may videotape the child or record the child's voice if the videotape or recording is to be used only for a purpose related to a cocurricular or extracurricular activity. *Education Code 26.009(b)(2)*

Discriminatory Club

An extracurricular activity sponsored or sanctioned by a district, including an athletic event or an athletic team practice, may not take place at an athletic club located in the United States that denies any person full and equal enjoyment of equipment or facilities provided by the athletic club because of the person's race, color, religion, creed, national origin, or sex.

"Athletic club" means an entity that provides sports or exercise equipment or facilities to its customers or members or to the guests of its customers or members.

Education Code 33.082

Special Olympics Recognition

If a district allows high school students to earn a letter for academic, athletic, or extracurricular achievements, the district must allow high school students to earn a letter on the basis of a student's participation in a Special Olympics event. *Education Code 33.093*

Student Election Clerks

Unless applied toward instructional requirements [see EIA], a student who is appointed as a student election clerk under Election Code 32.0511 or as a student early voting clerk under Election Code 83.012, may apply the time served toward a service requirement for participation in a school-sponsored extracurricular activity at the discretion of the school sponsor. *Education Code 33.092*

Before-School and After-School Programs

The board may establish before-school or after-school programs for students enrolled in elementary or middle school grades. A program established under this section may operate before, after, or before and after school hours.

A student is eligible to participate in the district's before-school or after-school program if the student is enrolled in a public or private school or resides within the boundaries of the district.

A district shall conduct a request for proposals procurement process to enable the district to determine if contracting with a child-care facility that provides a before-school or after-school program, as defined by Human Resources Code 42.002, to provide the district's before-school or after-school program would serve the district's best interests. Following the request for proposals procurement process, the district may enter into a contract with a child-care facility or implement a before-school or after-school program operated by the district. If the district enters into a contract with a child-care facility, the contract must comply with the requirements of Education Code 44.031 and may not exceed a term of three years.

The board may adopt rules in accordance with Education Code 11.165 [see BAA] to provide access to school campuses before or after school hours for the purpose of providing a before-school or after-school program.

Education Code 33.9031

First Amendment

A district shall take no action respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition a board for a redress of grievances. *U.S. Const. Amend. I*

Freedom of Speech

Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. At school and school events, students have First Amendment rights, applied in light of the special characteristics of the school environment.

Student expression that is protected by the First Amendment may not be prohibited absent a showing that the expression will materially and substantially interfere with the operation of the school or the rights of others.

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969) [See also FNCI]

The special characteristics of the school environment and the governmental interest in stopping student drug abuse allow a district to restrict student expression that it reasonably regards as promoting illegal drug use. *Morse v. Frederick, 551 U.S. 393 (2007)*

When a student threatens violence against a student body, such specific threatening speech to a school or its population is unprotected by the First Amendment: school officials may punish such speech without first collecting evidence sufficient to prove a reasonable belief that disruption would occur as a result of the speech. *Ponce v. Socorro Indep. Sch. Dist., 508 F.3d 765 (5th Cir. 2007)*

The inculcation of fundamental values necessary to the maintenance of a democratic society is part of the work of the school. The First Amendment does not prevent school officials from determining that particular student expression is vulgar and lewd, and therefore contrary to the school's basic educational mission. *Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986)*

Public schools may have a special interest in regulating some off-campus student speech, however, the interest must be sufficient to overcome the student's interest in free expression. Circumstances that may implicate a school's regulatory interests include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices. *Mahanoy Area School District v. B.L, 141 S.Ct. 2038 (2021)*

Prayer at School Activities

A public school student has an absolute right to individually, voluntarily, and silently pray or meditate in school in a manner that does not disrupt the instructional or other activities of the school. A student shall not be required or coerced to engage in or refrain from such prayer or meditation during any school activity. *Education Code 25.901*

Nothing in the Constitution as interpreted by the U.S. Supreme Court prohibits any public school student from voluntarily praying at any time before, during, or after the school day. But the religious liberty protected by the Constitution is abridged when a district affirmatively sponsors the particular religious practice of prayer.

A district shall not adopt a policy that establishes an improper majoritarian election on religion and has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events.

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000) (addressing school-sponsored, student-led prayer delivered over the public address system at high school football games) [For invocations and benedictions at commencement, see FMH.]

Federal Funds

As a condition of receiving federal funds under the Elementary and Secondary Education Act (ESEA), a district shall certify in writing to the Texas Education Agency (TEA) that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public schools, as detailed in the guidance from the United States secretary of education regarding constitutionally protected prayer. The certification shall be provided by October 1 of each year.

By November 1 of each year, TEA shall report to the secretary a list of districts that have not filed the certification or against which complaints have been made to TEA that the district is not in compliance with this section. The secretary may issue and secure compliance with rules or orders with respect to a district that fails to certify, or is found to have certified in bad faith, that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public schools.

20 U.S.C. 7904

Expression of Religious Viewpoints

A district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious view-

point expressed by the student on an otherwise permissible subject. *Education Code 25.151*

Policies

A district shall adopt and implement a local policy regarding a limited public forum and voluntary student expression of religious viewpoints. If a district voluntarily adopts and follows the model policy governing voluntary religious expression in public schools at Education Code 25.156, the district is in compliance with the provisions of Education Code Chapter 25, Subchapter E covered by the model policy.

A district shall adopt a policy that includes the establishment of a limited public forum for student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum must also require a district to:

1. Provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject;
2. Provide a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies;
3. Ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and
4. State, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the district.

Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint.

Disclaimer

The disclaimer required by item 4, above, must be provided at all graduation ceremonies. A district must continue to provide the disclaimer at any other event in which a student speaks publicly for as long as a need exists to dispel confusion over the district's nonsponsorship of the student's speech.

Education Code 25.152, .155

Class Assignments

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Homework and classroom assignments must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by a district. Students may not be

penalized or rewarded on account of the religious content of their work. *Education Code 25.153*

[For information on the study of religion, see EMI. For information on student religious groups and activities, see FNAB.]

Designated Time for Prayer and Religious Reading

The board may by record vote adopt a policy requiring every campus of the district to provide students and employees with an opportunity to participate in a period of prayer and reading of the Bible or other religious text on each school day.

Resolution

A board resolution to adopt the policy must read as follows:

“The (insert name of school district) shall adopt a policy requiring every campus of (insert name of district) to provide a period of prayer and reading of the Bible or other religious text as provided by Section 25.0823, Education Code.”

Policy Requirements

A policy adopted above must:

1. Prohibit a student or employee of the district from being permitted to participate in the period of prayer and reading of the Bible or other religious text unless the employee or parent or guardian of the student submits to the district a signed consent form that includes:
    a. An acknowledgment that the student or employee has a choice as to whether to participate in the period of prayer and reading of the Bible or other religious text;
    b. A statement that the person has no objection to the student's or employee's participation in or hearing of the prayers or readings offered during the period; and
    c. An express waiver of the person's right to bring a claim under state or federal law arising out of the adoption of a policy under this section, including a claim under the Establishment Clause of the First Amendment to the United States Constitution or a related state or federal law, releasing the district or school and district or school employees from liability for those claims brought in state or federal court;
2. Prohibit the provision of a prayer or reading of the Bible or other religious text over a public address system;
3. Specify that a period of prayer or reading of the Bible or other religious text may not be a substitute for instructional time; and

4. Include provisions ensuring a prayer or reading of the Bible or other religious text is not provided in the physical presence of, within the hearing of, or in another manner which would constitute an injury in fact within the meaning of the United States or Texas Constitution on a person for whom a signed consent form has not been submitted or has been revoked.

In order to comply with the requirements above, the policy may require that the period of prayer and reading of the Bible or other religious text be provided:

1. Before normal school hours;

2. Only in classrooms or other areas in which a consent form has been submitted for every employee and student, which may include an entire district if a consent form has been submitted for each employee and student at the campus; or

3. By any other method recommended by the attorney general or legal counsel for the district or school.

Revocation of Consent

An employee or parent or guardian of a student may revoke the person's consent provided above by informing the appropriate school administrator, as determined by the district. An employee or student for whom consent has been revoked may not participate in the period of prayer and reading of the Bible or other religious text until the employee or parent or guardian of the student submits to the district a new consent and remains bound by the waiver described above.

Attorney General Assistance and Defense

The attorney general, on request from the board, shall:

1. Provide advice on best methods for a district to comply with the requirements above;

2. Provide a model consent form that may be used for purposes of providing consent described above; and

3. Defend the district in a cause of action arising out of the adoption of a policy described above.

If the attorney general defends a district, the state is liable for the expenses, costs, judgments, or settlements of the claims arising out of the representation. The attorney general may settle or compromise any and all claims under this provision. The state may not be liable for any expenses, costs, judgments, or settlements of any claims arising out of the adoption of a policy described above against a district not being represented by the attorney general.

Individual Right Unaffected

Regardless of whether the board adopts a policy described above, this provision does not prohibit a student or employee of the district from participating in prayer or reading the Bible or other religious text during a period of the school day that is not designated as a period of prayer and reading of the Bible or other religious text.

Education Code 25.0823

Patriotic Observances

A district may officially encourage students to express love for the United States by reciting historical documents or singing official anthems that contain religious references; such patriotic or ceremonial occasions do not constitute a school-sponsored religious exercise. *Engel v. Vitale, 370 U.S. 421 (1962)*

A district shall not, however, compel students to participate in patriotic observances. *West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (holding unconstitutional a requirement that students salute the United States flag and recite the Pledge of Allegiance)*

[See EC for more information regarding the pledge of allegiance.]

Winter Celebrations

A district may educate students about the history of traditional winter celebrations, and allow students and district staff to offer traditional greetings regarding the celebrations, including:

1. “Merry Christmas”;
2. “Happy Hanukkah”; and
3. “Happy holidays.”

A district may display on school property scenes or symbols associated with traditional winter celebrations, including a menorah or a Christmas image such as a nativity scene or Christmas tree, if the display includes a scene or symbol of more than one religion or one religion and at least one secular scene or symbol.

A display relating to a traditional winter celebration may not include a message that encourages adherence to a particular religious belief.

Education Code 29.920

Equal Access Act

If a district secondary school receives federal financial assistance and has a limited open forum, as defined below, it shall not deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings. *20 U.S.C. 4071(a)*

Limited Open Forum in Secondary Schools

A district secondary school has a limited open forum for purposes of the Equal Access Act whenever the school grants an offering to or an opportunity for one or more noncurriculum-related student groups to meet on school premises during noninstructional time. *20 U.S.C. 4071(b)*

"Secondary school" means a public school that provides secondary education as determined by state law.

"Meeting" includes those activities of student groups that are permitted under a school's limited open forum and that are not directly related to the school curriculum.

"Noninstructional time" means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

20 U.S.C. 4072(1), (3)–(4)

"Noncurriculum-related student group" means any student group that does not directly relate to the body of courses offered by the school. A student group directly relates to the school's curriculum if it meets any of the following criteria:

1. The subject matter of the group is actually taught or will soon be taught in a regularly offered course.
2. The subject matter of the group concerns the body of courses as a whole.
3. Participation in the group is required for a particular course.
4. Participation in the group results in academic credit.

Westside Cmty. Sch. v. Mergens, 496 U.S. 226 (1990)

If a school has a limited open forum, it shall be deemed to offer a fair opportunity for students to conduct meetings within its forum if it uniformly provides that:

1. The meeting is voluntary and student-initiated.
2. There is no sponsorship of the meeting by the school or any government or its agents or employees. "Sponsorship" includes the act of promoting, leading, and participating in a

meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.

3. School employees are present at religious meetings only in a nonparticipatory capacity.

4. The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school.

5. Nonschool persons shall not direct, conduct, control, or regularly attend activities of student groups.

20 U.S.C. 4071(c), 4072(2)

The establishment of a limited open forum shall not authorize a school or district to:

1. Influence the form or content of any prayer or other religious activity.

2. Require any person to participate in prayer or other religious activity.

3. Expend public funds beyond the incidental cost of providing the space for student-initiated meetings.

4. Compel any school agent or employee to attend a meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee.

5. Sanction meetings that are otherwise unlawful.

6. Limit the rights of groups of students that are not of a specified numerical size.

7. Abridge the constitutional rights of any person.

20 U.S.C. 4071(d)

Maintain Order

The establishment of a limited open forum shall not limit the authority of a school, a district, its agents, or its employees to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary. *20 U.S.C. 4071(f)*

Religious Groups and Activities

Students may organize prayer groups, religious clubs, “see you at the pole” gatherings, or other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for

assembling as is given to other noncurricular groups without discrimination based on the religious content of the students' expression.

If student groups that meet for nonreligious activities are permitted to advertise or announce meetings of the groups, the district may not discriminate against groups that meet for prayer or other religious speech.

The district may disclaim school sponsorship of noncurricular groups and events in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Education Code 25.154

[For information on student expression of religious viewpoints, see FNA]

Student Clubs

Except as provided below, a school district may authorize or sponsor a student club.

A district may not authorize or sponsor a student club based on sexual orientation or gender identity.

A district must require the written consent of the parent of a student enrolled in the district before the student may participate in a student club authorized or sponsored at the district or school.

Education Code 33.0815

Use or Possession by Students

A board shall prohibit students from smoking, using, or possessing e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property.

"E-cigarette" means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device or a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device, regardless of whether the liquid solution or material contains nicotine. The term does not include a prescription medical device, prescription medication, or other prescribed substance unrelated to the cessation of smoking. The term "e-cigarette" includes:

1. A device regardless of whether it is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

2. A component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

Health and Safety Code 161.081(1-a)

[For information regarding the disciplinary consequences of student e-cigarette use, see FOC.]

Enforcement

The board shall ensure that district personnel enforce the policies on school property. *Education Code 38.006* [See DH and GKA]

Definition

A “personal communication device” means a telephone, cell phone such as a smartphone or flip phone, tablet, smartwatch, radio device, paging device, or any other electronic device capable of telecommunication or digital communication. The term does not include an electronic device provided to a student by a school district.

Personal Communication Device Policy

A board shall adopt, implement, and ensure the district complies with a written policy prohibiting a student from using a personal communication device while on school property during the school day. The district policy may provide for the district to comply by:

1. Prohibiting a student from bringing a personal communication device on school property; or
2. Designating a method for the storage of a student's personal communication device while the student is on school property during the school day.

Exceptions

In adopting the policy, the board must authorize the use of a personal communication device:

1. As necessary to implement an individualized education program, a plan created under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or a similar program or plan;
2. By a student with a documented need based on a directive from a qualified physician; or
3. As necessary to comply with a health or safety requirement imposed by law or as part of the district's safety protocols.

Penalties

The policy must establish disciplinary measures to be imposed for violation of the prohibition and may provide for confiscation of the personal communication device.

Disposal

A district policy may provide for disposal of a confiscated personal communication device in any reasonable manner, provided the district provides the student’s parent 90 days’ prior notice in writing of the district’s intent to dispose of the device.

Education Code 37.082(a)-(d)

Calculator Application

A district shall permit a student enrolled in a course that requires the student to use a graphing calculator to use a calculator application on a computing device, including a personal, laptop, or tablet computer, that provides the same functionality, unless the district makes available to the student a graphing calculator at no cost to the student.

A district may adopt policies related to student use of a computing device for purposes of a calculator application. To the extent Education Code 25.904 conflicts with Education Code 37.082 [see Personal Communication Device Policy, above], Education Code 25.904 prevails.

Education Code 25.904

Possession of Weapons

Expulsion Offense

A student shall be expelled from school if the student engages in conduct that contains the elements of the offense of unlawfully carrying weapons under Penal Code 46.02, or elements of an offense relating to prohibited weapons under Penal Code 46.05, on school property or while attending a school-sponsored or school-related activity on or off school property, subject to the requirements of Education Code 37.009(a) (pre-placement proceedings). *Education Code 37.007(a)(1)* [See also FOD]

Exception

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

1. At an approved target range facility that is not located on a school campus; and
2. While participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department.

This section does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored shooting sports competition or a shooting sports educational activity.

Education Code 37.007(k)

Federal Firearms Provision

Expulsion Offense

In accordance with the Gun-Free Schools Act, a district shall expel a student who brings a firearm, as defined by federal law, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that the superintendent may modify in writing the length of expulsion in the case of an individual student.

"School" Defined

For expulsion under this provision, "school" means any setting that is under the control and supervision of a district for the purpose of student activities approved and authorized by the district.

20 U.S.C. 7961; Education Code 37.007(e) [See FOD]

Exception

This provision shall not apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the district and the district adopts appropriate safeguards to ensure student safety. *20 U.S.C. 7961(g)* [See also DH and GKA]

Unlawful Carrying of Weapons

Handgun

A person commits an offense if the person:

1. Intentionally, knowingly, or recklessly carries on or about his or her person a handgun;

2. At the time of the offense is younger than 21 years of age or has been convicted of certain offenses described in Penal Code 46.02(a); and

3. Is not on the person's own premises or premises under the person's control; or inside of or directly en route to a motor vehicle that is owned by the person or under the person's control.

Penal Code 46.02(a)

Location-Restricted Knife

A person commits an offense if the person:

1. Intentionally, knowingly, or recklessly carries on or about his or her person a location-restricted knife;

2. Is younger than 18 years of age at the time; and

3. Is not:

   a. On the person's own premises or premises under the person's control;

   b. Inside of or directly en route to a motor vehicle that is owned by the person or under the person's control; or

   c. Under the direct supervision of a parent or legal guardian of the person.

Penal Code 46.02(a-4)

Additional Handgun Offenses

A person commits an offense if the person carries a handgun in violation of Penal Code 46.02(a-5)-(a-7). *Penal Code 46.02*

Definitions

Firearm

For purposes of state law, “handgun” means any firearm that is designed, made, or adapted to be fired with one hand. A “firearm” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. *Penal Code 46.01(3),(5)*

Location-Restricted Knife

“Location-restricted knife” means a knife with a blade over 5-1/2 inches. *Penal Code 46.01(6)*

Prohibited Weapons

Under Penal Code 46.05, a person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

1. An explosive weapon (any explosive or incendiary bomb, grenade, rocket, or mine that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of

causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon). *Penal Code 46.01(2)*

2. A machine gun (any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger). *Penal Code 46.01(9)*

3. Armor-piercing ammunition (handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used primarily in pistols and revolvers). *Penal Code 46.01(12)*

4. A chemical dispensing device (a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of dispensing a chemical capable of causing an adverse psychological or physiological effect on a human being). *Penal Code 46.01(14)*

5. A zip gun (a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance). *Penal Code 46.01(16)*

6. A tire deflation device (a device, including a caltrop or spike strip, that, when driven over, impedes or stops the movement of a wheeled vehicle by puncturing one or more of the vehicle's tires; it does not include a traffic control device that is designed to puncture one or more of a vehicle's tires when driven over in a specific direction, and has a clearly visible sign posted in close proximity to the traffic control device that prohibits entry or warns motor vehicle operators of the traffic control device). *Penal Code 46.01(17)*

7. An improvised explosive device (a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using nonmilitary components. It does not include unassembled components that can be legally purchased and possessed without a license, permit, or other governmental approval; or an exploding target that is used for firearms practice, sold in kit form, and contains the components of a binary explosive. *Penal Code 46.01(19)*

A person does not commit an offense if an item is listed at items 1-3, above, and is registered in the National Firearms Registration

and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or otherwise not subject to that registration requirement or unless the item is classified as a curio or relic by the United States Department of Justice.

Penal Code 46.05(a)

United States Constitution

A district shall take no action abridging the freedom of speech or the right of the people to petition the board for redress of grievances. *U.S. Const. Amend. I, XIV* [See FNA]

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

Texas Constitution

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

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

Federal Laws

Section 504

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

Americans with Disabilities Act

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

Title IX

A district that receives federal financial assistance, directly or indirectly, must adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 C.F.R. 106.8(c)* [See FB and FFH]

Grievances

A board shall provide for procedures to consider complaints that a parent's right has been denied. *Education Code 26.001(d)(1)*

A board shall adopt a grievance procedure that complies with Education Code Chapter 26A under which the board shall address

each grievance that it receives concerning a violation of a right guaranteed by Education Code Chapter 26 (Parental Rights), of a board policy, or of a provision of Education Code Title II.

Exceptions

The board is not required by the provision above or Education Code 11.1511(b)(13) (requiring adoption of a process to hear complaints) to address a grievance concerning a student's participation in an extracurricular activity that does not involve a violation of a right guaranteed by Education Code Chapter 26, of a board policy, or of a provision of Education Code Title II. This provision does not affect a claim brought by a parent under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) or a successor federal statute addressing special education services for a child with a disability.

Notice to Teacher or Employee

The grievance procedure must require that, for a complaint filed against a teacher or other employee, the school district provide notice of the complaint to the teacher or employee against whom the complaint was filed and sufficient opportunity for the teacher or employee against whom the complaint was filed to submit a written response to the complaint to be included in the record.

Education Code 26.011

Grievance Policy

The board shall adopt a grievance policy to address grievances received by the district. *Education Code 26A.001(a)*

Levels of Review

The policy must provide for the following levels of review, except as provided below:

1. Review by the principal of the district campus at which the grievance is filed or the principal's designee or, for a grievance that arises from subject matter unrelated to a campus, an administrator at the school district's central office;
2. If established by the policy, an appeal to an administrator at the school district's central office;
3. An appeal to the superintendent of the school district or the superintendent's designee; and
4. An appeal to the board of trustees of the school district.

A review or appeal on a grievance must be conducted by a person with the authority to address the grievance unless a preliminary hearing is necessary to develop a record or a recommendation for the board of trustees of the school district.

[For requirements for determining level of review related to recusal of a district employee or board member, see General Requirements, below.]

Education Code 26A.001(b), (c)

General Requirements

The policy must:

1. Prohibit the board or a district employee from retaliating against a student or parent of a student who files a grievance in accordance with the policy;
2. Require a person involved in reviewing a grievance under the policy to recuse himself or herself from reviewing the grievance if the person is the subject of the grievance;
3. Provide for a higher level of review if the person who would otherwise review the grievance is required to recuse himself or herself;
4. Provide for the creation and retention of a record of each hearing on the grievance, including documents submitted by the person who filed the grievance or determined relevant by school district personnel and a written record of the decision, including an explanation of the basis for the decision and an indication of each document that supports the decision;
5. Allow the person who filed the grievance to supplement the record with additional documents or add additional claims;
6. Allow for a member of the board to file a grievance with the district, but prohibit the member from voting on matters related to that grievance;
7. Allow for a remand to a lower level of review to develop a record at any time, including at the board level of review;
8. Require the district to direct a grievance that is filed with the incorrect administrator to the appropriate administrator and consider the grievance filed on the date on which the grievance was initially filed;
9. Require the district to issue a decision on the merits of the concern raised in the grievance, notwithstanding procedural errors or the type of relief requested;
10. Unless otherwise required by law, allow for a hearing or meeting at which the grievance will be discussed to be open or closed at the request of the person who filed the grievance; and

11. For a grievance before the board, require that the person who filed the grievance be provided at least five business days before the date on which the meeting to discuss the grievance will be held a description of any information the board of trustees intends to rely on that is not contained in the record; and

12. For a grievance before the board, require the meeting at which the grievance is discussed be recorded by video or audio recording or by transcript created by a certified court reporter.

Education Code 26A.001(e)

Deadlines

Parental Grievances

For a grievance filed by a parent of a student enrolled in the school district, the policy must provide:

1. Sixty days to file a grievance from the date on which the parent knew or had reason to know of the facts giving rise to the grievance; or

2. If the parent or person engaged in informal attempts to resolve the grievance, the later of 90 days to file a grievance from the date determined above or 30 days to file a grievance from the date on which the district provided information to the parent or person regarding how to file the grievance.

Appeal

The policy must provide at least 20 days to file an appeal after the date on which a decision on the grievance was made.

Hearings

For a hearing that is not before the board of trustees of the school district, the policy must require:

1. The district to hold a hearing not later than the 10th day after the date on which the grievance or appeal was filed; and

2. A written decision to be made not later than the 20th day after the date on which the hearing was held that includes any relief or redress to be provided and information regarding filing an appeal, including the timeline to appeal under this provision and Education Code 7.057, if applicable.

For a hearing before the board, the policy must require the board to:

1. Hold a meeting to discuss the grievance not later than the 60th day after the date on which the previous decision on the grievance was made; and

2. Make a decision on the grievance not later than the 30th day after the date on which the meeting is held.

Education Code 26A.002

Board Committee

The board may delegate the authority to hear and decide a grievance to a committee of at least three members composed only of members of the board. For purposes of an appeal to the commissioner under Education Code 7.057, a decision by the committee is a decision of the board of trustees. The policy requirements above apply to the committee in the same manner as those requirements apply to the board. *Education Code 29A.001(e)*

Report on Grievances

A district shall annually submit to the Texas Education Agency (TEA) a report on grievances filed in the district during the preceding year. The report must include for each grievance the resolution of the grievance and any corrective action taken. *Education Code 26A.001(g)*

Not later than December 1 of each year, TEA shall post on the agency's website a report on grievances filed in school districts during the preceding year. The report must aggregate the data statewide and state the number of grievances filed, the number of grievances resolved and the resolution of those grievances, and any corrective actions taken. *Education Code 26A.001(h)*

Filing Procedures and Forms

The board shall develop, make publicly available in a prominent location on the district's website, and include in the district's student handbook the procedures for resolving grievances; standardized forms for filing a grievance, a notice of appeal, or a request for a hearing under this chapter; and the method by which a grievance may be filed electronically.

Electronic Filing

A district shall ensure that a grievance may be submitted electronically at the location on the district's website at which the information described above is available.

TEA Notification

A district shall submit and make accessible to TEA the location on the district's website at which the information described above is available.

Education Code 26A.003

Commissioner Enforcement

If a grievance is appealed to the commissioner under Education Code 7.057, the commissioner of education may:

On Appeal

1. Investigate an alleged violation of state or federal law regarding the confidentiality of student information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.

Section 1232g), relating to the grievance and collaborate with relevant federal agencies in such an investigation; and

2. Take any action necessary to compel the district, the district's board, or a district employee to comply with the state or federal law.

Education Code 26A.001(f)

Determination of Retaliation

If the commissioner determines that a school district educator has retaliated against a student or parent of or person standing in parental relation to a student in violation of the policy requirement, above, the commissioner of education may report the educator to the State Board for Educator Certification for investigation. *Education Code 26A.001(i)*

Superintendent Testimony

If the commissioner of education finds against a school district under Education Code 7.057 in at least five grievances to which that provision applies involving the district during a school year, the superintendent of the school district must appear before the State Board of Education to testify regarding the commissioner's findings and the frequency of grievances against the district. *Education Code 26A.004*

Denial of Class Credit or Final Grade

If a student is denied credit or a final grade for a class by an attendance committee, the student may appeal the decision to the board. *Education Code 25.092(d)* [See FEC]

Complaints Against Professional Employees

A person may not file suit against a professional employee of a district unless the person has exhausted the district's remedies for resolving the complaint. *Education Code 22.0514*

"Professional employee of a district" includes:

1. A superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, school counselor, nurse, and teacher's aide employed by a district;
2. A teacher employed by a company that contracts with a district to provide the teacher's services to the district;
3. A student in an education preparation program participating in a field experience or internship;
4. A DPS-certified school bus driver;
5. A member of the board; and
6. Any other person whose employment by a district requires certification and the exercise of discretion.

Education Code 22.051(a)

Finality of Grades

An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with a district's grading policy applicable to the grade, as determined by the board.

A board's determination is not subject to appeal. This provision does not prohibit an appeal related to a student's eligibility to participate in extracurricular activities under Education Code 33.081. [See FM]

Education Code 28.0214

Closed Meeting

A board may conduct a closed meeting on a parent or student complaint to the extent required or provided by law. *Gov't Code Ch. 551, Subch. D* [See BEC]

Record of Proceedings

An appeal of a board's decision to the commissioner of education shall be decided based on a review of the record developed at the district level. "Record" includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

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

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

19 TAC 157.1073(d)

Complaints

In this policy, the terms “complaint” and “grievance” shall have the same meaning.

Other Complaint Processes

Student or parent complaints shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with FNG after the relevant complaint process has been followed:

1. Complaints alleging discrimination or harassment based on race, color, religion, sex, gender, national origin, age, or disability shall be submitted in accordance with FFH.
2. Complaints concerning dating violence shall be submitted in accordance with FFH.
3. Complaints concerning retaliation related to discrimination and harassment shall be submitted in accordance with FFH.
4. Complaints concerning bullying or retaliation related to bullying shall be submitted in accordance with FFI.
5. Complaints concerning failure to award credit or a final grade on the basis of attendance shall be submitted in accordance with FEC.
6. Complaints concerning expulsion shall be submitted in accordance with FOD and the Student Code of Conduct.
7. Complaints concerning any final decisions of the gifted and talented selection committee regarding selection for or exit from the gifted program shall be submitted in accordance with EHBB.
8. Complaints within the scope of Section 504, including complaints concerning identification, evaluation, or educational placement of a student with a disability, shall be submitted in accordance with FB and the procedural safeguards handbook.
9. Complaints within the scope of the Individuals with Disabilities Education Act, including complaints concerning identification, evaluation, educational placement, or discipline of a student with a disability, shall be submitted in accordance with EHBAE, FOF, and the procedural safeguards handbook provided to parents of all students referred to special education.
10. Complaints concerning instructional resources shall be submitted in accordance with the EF series.

11. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with the CKE series.

12. Complaints concerning intradistrict transfers or campus assignment shall be submitted in accordance with FDB.

13. Complaints concerning admission, placement, or services provided for a homeless student shall be submitted in accordance with FDC.

14. Complaints concerning disputes regarding a student's eligibility for free or reduced-priced meal programs shall be submitted in accordance with COB.

Complaints regarding refusal of entry to or ejection from District property based on Education Code 37.105 shall be filed in accordance with this policy. However, the timelines shall be adjusted as necessary to permit the complainant to address the Board in person within 90 calendar days of filing the initial complaint, unless the complaint is resolved before the Board considers it. [See GKA(LEGAL)]

Notice to Students and Parents

The District shall inform students and parents of this policy through appropriate District publications and on the District's website.

Informal Process

The Board encourages students and parents to discuss their concerns with the appropriate teacher, principal, or other appropriate campus or District administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

Filing Deadlines

After Informal Process

If a student or parent has engaged in the informal process in an attempt to resolve the complaint with the District and has not reached a resolution during the process, the student or parent shall have the later of:

- Ninety calendar days to file a complaint from the date the student or parent first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint; or

- Thirty calendar days to file a complaint from the date on which the District provided information to the student or parent regarding how to file a grievance.

[See Formal Process, below]

No Prior Informal Process

If the student or parent has not engaged in the informal process, the student or parent shall have no more than 60 calendar days from the date the student or parent first knew, or with reasonable

diligence should have known, of the decision or action giving rise to the complaint or grievance to file a complaint using the appropriate forms.

Deadline Extensions

All deadlines shall be strictly followed unless otherwise required by law or modified by mutual written consent.

Formal Process

A student or parent may initiate the formal process described below by timely filing a written complaint form.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or “mini-trial” at any level.

The complaint form shall be filed with the lowest level administrator who has the authority to remedy the alleged problem. In most circumstances, students and parents shall file Level One complaints with the campus principal for any complaint on a matter related to a campus. For a complaint that arises on a matter that is unrelated to a campus, the complaint shall be filed with the appropriate District-level administrator.

If the subject matter of the complaint requires a Board decision, is a complaint about a Board member, or is a complaint about the Superintendent, the complaint shall be initiated at the Board level. A preliminary hearing to develop a record or recommendation for the Board may be conducted by an appropriate administrator.

A Board member shall be permitted to file a complaint under this policy, but, if the complaint is considered by the Board or Board committee, the Board member shall be prohibited from voting on the Board’s or Board committee’s decision.

If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

Option to Continue Informal Process

Even after initiating the formal complaint process, the complainant is encouraged to seek informal resolution of their concerns. A complainant whose concerns are resolved may withdraw a formal complaint at any time.

Notice of Complaint

A District employee against whom a complaint has been filed shall be provided notice of the complaint in accordance with administrative regulations. The employee shall have sufficient opportunity to submit a written response to the complaint that shall be included in the record of the complaint.

Freedom from Retaliation

Neither the Board nor any District employee shall unlawfully retaliate against any student or parent for bringing a concern or complaint.

General Provisions

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, or by U.S. Mail. Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on the deadline. Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are postmarked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three business days after the deadline.

Scheduling Hearings

The District shall make reasonable attempts to schedule hearings at a mutually agreeable time. If a complainant fails to appear at a scheduled hearing, the District may hold the hearing and issue a decision in the complainant's absence.

Decision

A "decision" shall mean a written communication to the complainant from the appropriate administrator that provides an explanation of the basis of the decision, an indication of each document that supports the decision, and any relief or redress to be provided. A decision shall be issued on the merits of the concern raised in the complaint notwithstanding any procedural errors or the type of relief or redress requested.

The decision shall also include information regarding the filing of an appeal in accordance with this policy. After a hearing at Level Three, the decision shall include information on submitting an appeal to the commissioner.

A decision may be hand-delivered, sent by electronic communication to the complainant's email address of record, or sent by U.S. Mail to the complainant's mailing address of record. Mailed decisions shall be timely if they are postmarked by U.S. Mail on or before the deadline.

Representative

"Representative" shall mean any person who or organization that is designated by the complainant to represent the complainant in the complaint process. A student may be represented by an adult at any level of the complaint.

The complainant may designate a representative through written notice to the District at any level of this process. The representative may participate in person or by telephone conference call. If the complainant designates a representative with fewer than three

business days' notice to the District before a scheduled hearing, the District may reschedule the hearing to a later date, if desired, in order to include the District's counsel. The District may be represented by counsel at any level of the process.

Consolidating Complaints — To promote efficiency in addressing complaints, the appropriate administrator shall determine if separate or serial complaints arising from an event or series of related events shall be consolidated.

Costs Incurred — Each party shall pay its own costs incurred in the course of the complaint.

Complaint and Appeal Forms — Complaints and appeals under this policy shall be submitted on a form provided by the District.

Copies of any documents that support the complaint should be included with the complaint form. If the complainant does not have copies of these documents, copies may be presented at the Level One hearing. After the Level One hearing, the complainant may supplement the record with additional documents or include additional claims.

Record — A record of each complaint hearing shall be created and retained in accordance with this policy. The record shall include documents submitted by the complainant, documents determined relevant by District personnel, and the decision.

Remand — A complaint or appeal form that is incomplete in any material aspect shall be refiled, if at Level One, and remanded at all other levels in order to develop an adequate record of the complaint.

If an adequate record has not been developed, the appropriate administrator may remand the complaint to a lower level. The Board or Board committee may remand a complaint to a lower level if at the Board level of review an adequate record has not been developed.

Assignment of Hearing Officer — When a District employee is the subject of a complaint, the hearing shall be conducted by an administrator who is in a supervisory or higher organizational role. The District employee who is the subject of the complaint shall recuse themselves from reviewing the complaint at any level in the process.

Investigation — The District may conduct an investigation at any level in the complaint process. If the District and the complainant mutually agree, all deadlines shall be suspended during an investigation.

Complaint Levels

Level One — At Level One, the appropriate hearing officer shall hold a hearing with the complainant within 10 calendar days after receipt of the

written complaint. The hearing officer may set reasonable time limits for the hearing.

The hearing officer shall provide the complainant a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider information provided with the complaint form and any other relevant documents or information the hearing officer believes will help resolve the complaint.

Level Two

If the complainant did not receive the relief requested at Level One or if the time for a decision has expired, the complainant may request a hearing at Level Two to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within 20 calendar days of the date of the Level One decision or, if no decision has been communicated to the complainant, within 20 calendar days of the Level One decision deadline.

After receiving notice of the appeal, the Level One hearing officer shall prepare and forward a record of the Level One complaint to the Level Two hearing officer and provide a copy of the Level One record to the complainant.

The Level One record shall include:

1. The original complaint form and any attachments.
2. Any other documents submitted by the complainant at Level One.
3. If the complaint is against a District employee, the written response of the District employee, if any.
4. The decision issued at Level One and any attachments.
5. All other documents relied upon by the Level One hearing officer in reaching the Level One decision.

The hearing officer shall hold a hearing within 10 calendar days after the appeal notice is filed. The hearing officer may set reasonable time limits for the hearing.

The hearing officer shall provide the complainant a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider the Level One record, any additional information provided prior to the Level Two hearing, and any other relevant documents or information the hearing officer believes will help resolve the complaint.

Recordings of the Level One and Level Two hearings, if any, shall be maintained with the Level One and Level Two records.

Level Three

If the complainant did not receive the relief requested at Level Two or if the time for a decision has expired, the complainant may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within 20 calendar days of the date of the Level Two decision or, if no decision has been communicated to the complainant, within 20 calendar days of the Level Two decision deadline.

Unless the Board delegates a committee in accordance with law, the Board shall hear the appeal of the Level Two decision.

After receiving notice of the appeal, the Board or Board committee shall hold a meeting to discuss the complaint no later than 60 calendar days after the date on which the Level Two decision was made.

The Superintendent shall inform the complainant whether the Board or a Board committee will hear the appeal and of the date, time, and place of the meeting at which the complaint will be on the agenda for presentation to the Board or Board committee.

At least five business days before the Board or Board committee meeting, the Superintendent shall provide the complainant a description of any information the Board intends to rely on that is not contained in the record created at the previous hearing levels, including any preliminary hearing.

The Superintendent shall provide the Board the record of the Level Two appeal. The complainant may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The notice of appeal from Level One to Level Two.
3. Any other documents submitted by the complainant at Level Two.
4. The decision issued at Level Two and any attachments.
5. All other documents relied upon by the administration in reaching the Level Two decision.

The complainant may request that the complaint be heard in open or closed meeting. The District shall honor that request unless the Texas Open Meetings Act or other applicable law requires otherwise. [See BE]

At the meeting, the presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the complainant and administration to each make a presentation and provide rebuttal and an opportunity for questioning by Board members.

In addition to any other record of the meeting required by law, the Board or Board committee shall prepare a separate record of the Level Three presentation. The Level Three presentation, including the presentation by the complainant or the complainant's representative, any presentation from the administration, and questions from Board members with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board or Board committee shall then consider the complaint. It shall make a decision no later than 30 calendar days after the date of the Board or Board committee meeting at which the complaint was presented. The complainant shall be provided a decision in accordance with this policy and state law.

Student Code of Conduct

The board shall adopt a Student Code of Conduct for a district, with the advice of its district-level committee. The Student Code of Conduct must:

1. Specify the circumstances, in accordance with Education Code Chapter 37, Subchapter A, under which a student may be removed from a classroom, campus, disciplinary alternative education program (DAEP), or vehicle owned or operated by the district.

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

3. Outline conditions under which a student may be suspended, as provided by Education Code 37.005 [see FOB], or expelled, as provided by Education Code 37.007 [see FOD].

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

    a. Self-defense;

    b. Intent or lack of intent at the time the student engaged in the conduct;

    c. A student's disciplinary history;

    d. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;

    e. A student's status in the conservatorship of the Department of Family and Protective Services; or

    f. A student's status as a student who is homeless.

5. Provide guidelines for setting the length of removal to a DAEP or of expulsion. Except as provided by Education Code 37.007(e) (Gun-Free Schools Act [see FOD]), a district is not required to specify a minimum term of removal or expulsion.

6. Address the notification of the parent or guardian of a student's violation of the Student Code of Conduct that results in suspension, removal to a DAEP, or expulsion.

7. Prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions. "Bullying" has the meaning provided by Education Code 37.0832. [See FFI] "Harassment" means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety. "Hit list" means a list of people targeted to be harmed using a firearm, as defined by Penal Code 46.01(3) [see FNCG]; a knife, as defined by Penal Code 46.01(7) (any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument); or any other object to be used with intent to cause bodily harm.

8. Provide, as appropriate for students at each grade level, methods, including options, for:

    a. Managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district;

    b. Disciplining students; and

    c. Preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

9. Include an explanation of the provisions regarding refusal of entry to or ejection from district property under Education Code 37.105 [see GKA], including the appeal process established under 37.105(h).

10. Include a statement regarding whether the board has adopted a policy for parental involvement in school disciplinary placements [see Parental Involvement Policy, below] and, if so, the provisions of that policy.

The methods adopted must provide that a student who is enrolled in a special education program under Education Code Chapter 29, Subchapter A, may not be disciplined in a manner that results in a change in the student's educational placement for bullying, harassment, or making hit lists until an admission, review, and dismissal

(ARD) committee meeting has been held to review the conduct. [See FOF]

Education Code 37.001(a)-(b-1), (e)

Law Enforcement Duties

The law enforcement duties of peace officers, school resource officers, and security personnel [see CKE] must be included in the Student Code of Conduct. *Education Code 37.081(d)(2)*

Changes in SCOC

Once a Student Code of Conduct is promulgated, any change or amendment shall be approved by a board.

Posting

The Student Code of Conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal.

Education Code 37.001(b-1)-(c)

Notice to Parents

Each school year, a district shall provide parents with notice of and information regarding the Student Code of Conduct. *Education Code 37.001(d)*

Noncustodial Parent

A noncustodial parent may request in writing that, for the remainder of the school year in which the request is received, a district provide that parent with a copy of any written notification that is generally provided to a student's parent or guardian, relating to student misconduct under Education Code 37.006 or 37.007. A district may not unreasonably deny the request. Notwithstanding this requirement, a district shall comply with any applicable court order of which the district has knowledge. *Education Code 37.0091*

Determination of Antisemitism

In taking disciplinary action against a student for behavior that violates the Student Code of Conduct and that may reasonably be determined to have been motivated by antisemitism, a district shall use the definition of antisemitism provided by Government Code 448.001, below, including the examples referenced in that term, in determining whether the student's behavior was motivated by antisemitism. *Education Code 37.0095*

"Antisemitism" means a certain perception of Jews that may be expressed as hatred toward Jews. The term includes rhetorical and physical acts of antisemitism directed toward Jewish or non-Jewish individuals or their property or toward Jewish community institutions and religious facilities. Examples of antisemitism are included with the International Holocaust Remembrance Alliance's "Working Definition of Antisemitism" adopted on May 26, 2016. *Gov't Code 448.001(2)*

Copies to Staff

The district shall provide each teacher and administrator with a copy of Education Code Chapter 37, Subchapter A regarding student discipline and with a copy of the related local policy. *Education Code 37.018*

Campus Behavior Coordinator

A single person at each campus must be designated to serve as the campus behavior coordinator (CBC). The person may be the campus principal or any other campus administrator selected by the principal.

The CBC is primarily responsible for maintaining student discipline and the implementation of Education Code Chapter 37, Subchapter A. Additional school staff members may assist the CBC in the performance of the CBC's duties, provided that the CBC personally verifies that all aspects of Education Code Chapter 37, Subchapter A, are appropriately implemented.

Duties

Except as provided below, the specific duties of the CBC may be established by campus or district policy. Unless the policy provides otherwise, duties imposed on a campus principal or other campus administrator by Education Code Chapter 37, Subchapter A must be performed by the CBC and a power granted to a campus principal may be exercised by the CBC.

The CBC shall:

1. Monitor disciplinary referrals;
2. Report to the campus's threat assessment and safe and supportive school team [see FFB] any student who engages in conduct that contains the elements of:
    a. The offense of terroristic threat under Penal Code 22.07;
    b. The offense of unlawfully carrying weapons under Penal Code 46.02;
    c. An offense relating to prohibited weapons under Penal Code 46.05; or
    d. The offense of exhibiting, using, or threatening to exhibit or use a firearm under Education Code 37.125; and
3. Report to the campus's threat assessment and safe and supportive school team [see FFB] any concerning student behaviors or behavioral trends that may pose a serious risk of violence to the student or others.

Notice to Parents

The CBC shall promptly notify a student's parent or guardian if the student is placed into in-school or out-of-school suspension, placed

in a DAEP, expelled, or placed in a JJAEP or is taken into custody by a law enforcement officer.

A CBC must provide notice by promptly contacting the parent or guardian by telephone or in person; and making a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian.

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

If a CBC is unable or not available to promptly provide notice, the principal or other designee shall provide the notice.

Education Code 37.0012

Website Requirement

A district shall post on the district's website, for each campus, the email address and dedicated telephone number of a person clearly identified as:

1. The campus behavior coordinator; or
2. If the district has been designated as a district of innovation under Education Code Chapter 12A [see AF] and is exempt from the requirement to designate a campus behavior coordinator under the district's local innovation plan, a campus administrator designated as being responsible for student discipline.

Education Code 26.015

Parent Involvement Policy

The board may adopt a policy for parental involvement in school disciplinary placements.

If adopted, the policy must provide for:

1. The principal, CBC, or other appropriate administrator to notify the parent of a student who has been placed in a disciplinary alternative education program or expelled of the parent's right to request a behavioral agreement that specifies the responsibilities of the parent and student to be developed; and
2. If a behavioral agreement is developed and the student and the student's parent comply with the terms of the agreement, a reduction in the period of the disciplinary placement imposed on the student except as provided below.

A reduction in the period of a disciplinary placement does not entitle the student for whom the period of placement was reduced to a different disciplinary placement. The reduction in the period of a disciplinary placement is at the sole discretion of the principal, CBC, or other appropriate administrator and may be revoked or amended at any time if the student or the student's parent does not comply with the terms of the behavioral agreement.

A behavioral agreement must include in writing the specific reduction in the period of the student's disciplinary placement with which the student will be credited if the student and the student's parent comply with the terms of the behavioral agreement.

The commissioner of education shall adopt a model behavioral agreement for use by districts in developing a behavioral agreement.

Education Code 37.0014

No Unsupervised Setting

Except for students who are suspended or expelled, no student may be placed in an unsupervised setting as a result of conduct for which a student may be placed in a DAEP. *Education Code 37.008(h)*

Continuation of Disciplinary Action

If a district takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.

“Disciplinary action” means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student.

“District or school” includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.

Education Code 37.022

Opportunity to Complete Courses

If a student is placed in in-school suspension or other alternative setting other than a DAEP, a district shall offer the student the opportunity to complete, before the beginning of the next school year, each course in which the student was enrolled at the time of removal. A district may provide the opportunity by any method available, including a correspondence course, distance learning, or summer school. *Education Code 37.021* [For DAEP notice requirements, see FOCA.]

Alternative Means to Receive Coursework

A district shall provide to a student during the period of the student's suspension under Education Code 37.005, regardless of whether the student is placed in in-school or out-of-school suspension, an alternative means of receiving all coursework provided in the classes in the foundation curriculum under Education Code 28.002(a)(1) that the student misses as a result of the suspension. A district must provide at least one option for receiving the coursework that does not require the use of the internet. *Education Code 37.005(e)*

No Restriction of Recess or Physical Activity

A district employee may not, as a penalty for a student's academic performance or behavior, restrict the student's participation in:

1. Recess or other physical activity offered as part of the district's physical education curriculum for a student enrolled in kindergarten or in a grade level below grade six; or
2. Physical activity offered as part of the district's physical education curriculum for a student enrolled in grade level six, seven, or eight.

Education Code 28.002(l-4)

Seclusion

A district employee or volunteer or an independent contractor of a district may not place a student in seclusion. *Education Code 37.0021(c)*

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

1. Is designed solely to seclude a person; and
2. Contains less than 50 square feet of space.

Education Code 37.0021(b)(2)

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

1. Is employed or commissioned by a school district; or
2. Provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency.

Education Code 37.0021(h)

Exceptions

This prohibition on seclusion does not apply to:

1. A peace officer performing law enforcement duties; or

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

Law Enforcement Duties

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

Education Code 37.0021(b)(4), (g)

[For information on seclusion involving students in special education, see FOF.]

Officer or Security Personnel Use of Restraint or Taser

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

Definitions

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

Prohibition

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

Education Code 37.0021(b)(1), (b)(5), (j)

[For information on restraint involving students in special education, see FOF.]

Restraint Reports

A district shall report electronically to the Texas Education Agency (TEA), in accordance with standards provided by commissioner rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. The report must be consistent with the requirements adopted by commissioner rule for reporting the use of restraint involving students with disabilities [see FOF]. *Education Code 37.0021(i)*

Corporal Punishment

If the board adopts a policy under Education Code 37.001(a)(8) under which corporal punishment is permitted as a method of student discipline, a district educator may use corporal punishment to discipline a student unless the student's parent or guardian or other person having lawful control over the student has previously pro-

vided a written, signed statement prohibiting the use of corporal punishment as a method of student discipline. *Education Code 37.0011(b)*

Parent Statement — To prohibit the use of corporal punishment as a method of student discipline, each school year a student's parent or guardian or other person having lawful control over the student must provide a separate written, signed statement to the board in the manner established by the board. The student's parent or guardian or other person having lawful control over the student may revoke the statement provided to the board at any time during the school year by submitting a written, signed revocation to the board in the manner established by the board. *Education Code 37.0011(c)-(d)*

Definition — "Corporal punishment" means the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline. The term does not include physical pain caused by reasonable physical activities associated with athletic training, competition, or physical education or the use of restraint as authorized under Education Code 37.0021 [see FOF]. *Education Code 37.0011(a*)

Use of Force to Maintain Discipline — The use of force, but not deadly force, against a student is justified if the teacher or administrator is entrusted with the care, supervision, or administration of the student when, and to the degree the teacher or administrator reasonably believes the force is necessary, to further the purpose of education or to maintain discipline in a group. *Penal Code 9.62*

Aversive Techniques — A district or district employee or volunteer or an independent contractor of a district may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied, to a student.

"Aversive technique" means a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. The term includes a technique or intervention that:

1. Is designed to or likely to cause physical pain, other than an intervention or technique permitted under Education Code 37.0011 [see Corporal Punishment, above];
2. Notwithstanding the above corporal punishment provisions, is designed to or likely to cause physical pain through the use of electric shock or any procedure that involves the use of pressure points or joint locks;
3. Involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student's face;

4. Denies adequate sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom facility;

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

6. Employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;

7. Impairs the student's breathing, including any procedure that involves:

    a. Applying pressure to the student's torso or neck; or

    b. Obstructing the student's airway, including placing an object in, on, or over the student's mouth or nose or placing a bag, cover, or mask over the student's face;

8. Restricts the student's circulation;

9. Secures the student to a stationary object while the student is in a sitting or standing position;

10. Inhibits, reduces, or hinders the student's ability to communicate;

11. Involves the use of a chemical restraint;

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

13. Except as provided below, deprives the student of the use of one or more of the student's senses.

Education Code 37.0023(a)-(b)

An aversive technique that deprives the student of the use of one or more of the student's senses may be used if the technique is executed in a manner that:

1. Does not cause the student discomfort or pain; or

2. Complies with the student's individualized education program or behavior intervention plan.

Nothing in this section may be construed to prohibit a teacher from removing a student from class under Education Code 37.002. [See FOA]

Education Code 37.0023(c)-(d)

Videotapes and Recordings

A district employee or contractor is not required to obtain the consent of a child's parent before the employee or contractor may make a videotape of the child or authorize the recording of the child's voice if the videotape or recording is to be used only for purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses. *Education Code 26.009(b)(1)*

Teacher Documentation

A teacher may document any conduct by a student that does not conform to the Student Code of Conduct and may submit that documentation to the principal. A district may not discipline a teacher on the basis of the submitted documentation. *Education Code 37.002(b-1)*

Reports

Disciplinary Alternative Education Programs

For each placement in a disciplinary alternative education program (DAEP), a district shall annually report to the commissioner:

1. Information identifying the student, including the student's race, sex, and date of birth, that will enable TEA to compare placement data with information collected through other reports;
2. Information indicating whether the placement was based on:
    a. Conduct violating the Student Code of Conduct;
    b. Conduct for which a student may be removed from class by a teacher [see FOA and the Student Code of Conduct];
    c. Conduct for which placement in a DAEP is required [see FOC and the Student Code of Conduct]; or
    d. Conduct occurring while a student was enrolled in another district and for which placement in a DAEP is permitted by Education Code 37.008(j);
3. The number of full or partial days the student was assigned to the program and the number of full or partial days the student attended the program; and
4. The number of placements that were inconsistent with the guidelines on length of placement in the Student Code of Conduct.

Expulsions

For each expulsion, a district shall annually report to the commissioner:

1. Information identifying the student, including the student's race, sex, and date of birth, that will enable TEA to compare placement data with information collected through other reports;
2. Information indicating whether the expulsion was based on:
    a. Conduct for which expulsion is required, including information specifically indicating whether a student was expelled for bringing a firearm to school; or
    b. Conduct for which expulsion is permitted;
3. The number of full or partial days the student was expelled;
4. Information indicating whether:
    a. The student was placed in a JJAEP;
    b. The student was placed in a DAEP; or
    c. The student was not placed in a JJAEP or other alternative education program; and
5. The number of expulsions that were inconsistent with the guidelines on length of expulsion in the Student Code of Conduct.

Out-of-School Suspensions

For each out-of-school suspension under Education Code 37.005, a district shall report:

1. Information identifying the student, including the student's race, sex, and date of birth, that will enable TEA to compare placement data with information collected through other reports;
2. Information indicating the basis for the suspension;
3. The number of full or partial days the student was suspended; and
4. The number of out-of-school suspensions that were inconsistent with the guidelines included in the Student Code of Conduct under Education Code 37.001(a)(3) [see Student Code of Conduct, item 3, above].

Education Code 37.020

Student Code of Conduct

The District's rules of discipline are maintained in the Board-adopted Student Code of Conduct and are established to support an environment conducive to teaching and learning.

Rules of conduct and discipline shall not have the effect of discriminating on the basis of gender, race, color, disability, religion, ethnicity, or national origin.

At the beginning of the school year and throughout the school year as necessary, the Student Code of Conduct shall be:

1. Posted and prominently displayed at each campus or made available for review in the principal's office, as required by law; and
2. Made available on the District's website and/or as a hard copy to students, parents, teachers, administrators, and others on request.

Revisions

Revisions to the Student Code of Conduct approved by the Board during the year shall be made available promptly to students and parents, teachers, administrators, and others.

Extracurricular Standards of Behavior

With the approval of the principal and Superintendent, sponsors and coaches of extracurricular activities may develop and enforce standards of behavior that are higher than the District-developed Student Code of Conduct and may condition membership or participation in the activity on adherence to those standards. Extracurricular standards of behavior may take into consideration conduct that occurs at any time, on or off school property.

A student shall be informed of any extracurricular behavior standards at the beginning of each school year or when the student first begins participation in the activity. A student and his or her parent shall sign and return to the sponsor or coach a statement that they have read the extracurricular behavior standards and consent to them as a condition of participation in the activity.

Standards of behavior for an extracurricular activity are independent of the Student Code of Conduct. Violations of these standards of behavior that are also violations of the Student Code of Conduct may result in independent disciplinary actions.

A student may be removed from participation in extracurricular activities or may be excluded from school honors for violation of extracurricular standards of behavior for an activity or for violation of the Student Code of Conduct.

"Parent" Defined

Throughout the Student Code of Conduct and discipline policies, the term "parent" includes a parent, legal guardian, or other person having lawful control of the child.

General Discipline Guidelines

A District employee shall adhere to the following general guidelines when imposing discipline:

1. A student shall be disciplined when necessary to improve the student's behavior, to maintain order, or to protect other students, school employees, or property.
2. A student shall be treated fairly and equitably. Discipline shall be based on an assessment of the circumstances of each case. Factors to consider shall include:
    a. The seriousness of the offense;
    b. The student's age;
    c. The frequency of misconduct;
    d. The student's attitude;
    e. The potential effect of the misconduct on the school environment;
    f. Requirements of Chapter 37 of the Education Code; and
    g. The Student Code of Conduct adopted by the Board.
3. Before a student under 18 is assigned to detention outside regular school hours, notice shall be given to the student's parent to inform him or her of the reason for the detention and permit arrangements for necessary transportation.

Corporal Punishment

The Board prohibits the use of corporal punishment in the District. Students shall not be spanked, paddled, or subjected to other physical force as a means of discipline for violations of the Student Code of Conduct.

Physical Restraint

Note: A District employee may restrain a student with a disability who receives special education services only in accordance with law. [See FOF(LEGAL)]

Within the scope of an employee's duties, a District employee may physically restrain a student if the employee reasonably believes restraint is necessary in order to:

1. Protect a person, including the person using physical restraint, from physical injury.

2. Obtain possession of a weapon or other dangerous object.
3. Protect property from serious damage.
4. Remove a student refusing a lawful command of a school employee from a specific location, including a classroom or other school property, in order to restore order or to impose disciplinary measures.

Video and Audio Monitoring

Video and audio recording equipment may be used for safety purposes to monitor student behavior on District property.

When video and audio recording equipment is in use, the District shall post signs notifying students and parents about the District's use of video and audio recording equipment. Students shall not be notified when the equipment is turned on.

Use of Recordings

The principal shall review recordings as needed, and evidence of student misconduct shall be documented. A student found to be in violation of the District's Student Code of Conduct shall be subject to appropriate discipline.

Access to Recordings

Recordings shall remain in the custody of the campus principal and shall be maintained as required by law. A parent or student who wishes to view a recording in response to disciplinary action taken against the student may request such access under the procedures set out by law. [See FL(LEGAL)]

Mandatory Removal by a Teacher

A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program (DAEP) or expulsion, as appropriate, a student who engages in conduct described in Education Code 37.006 (removal) or 37.007 (expulsion). [See FOC and FOD] *Education Code 37.002(d)*

Routine Referral

A teacher may send a student to the campus behavior coordinator's (CBC) office to maintain effective discipline in the classroom. The CBC shall respond by employing appropriate discipline management techniques, consistent with the Student Code of Conduct that can reasonably be expected to improve the student's behavior before returning the student to the classroom. If the student's behavior does not improve, the CBC shall employ alternative discipline management techniques, including any progressive interventions designated as the responsibility of the CBC in the Student Code of Conduct. *Education Code 37.002(a)* [See FO]

Discretionary Removal

A teacher may remove from class a student who:

1. Repeatedly interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn;
2. Demonstrates behavior that is unruly, disruptive, or abusive toward the teacher, another adult, or another student; or
3. Engages in conduct that constitutes bullying, as defined by Education Code 37.0832 [see FFI].

Education Code 37.002(b)

Subject to requirements related to teaching and discussing certain debated and controversial topics under Education Code 28.0022(a)(2) and (d) [see EMB], a teacher may remove a student from class based on a single incident of behavior described above. *Education Code 37.002(b-3)*

Reporting Classroom Removals

A student who is sent to the campus behavior coordinator's or other administrator's office under a routine referral or a discretionary removal, as described above, is not considered to have been removed from the classroom for the purposes of reporting data through the Public Education Information Management System (PEIMS) or other similar reports required by state or federal law. *Education Code 37.002(e)*

[See DNA for information about teacher evaluations and disciplinary referrals.]

A teacher, campus behavior coordinator, or other appropriate administrator shall notify a parent of a student of the removal of a student from class described above. *Education Code 37.002(b-2)*

Placement of Student

If a teacher removes a student from class under the provisions above, the principal may place the student in another appropriate classroom, in-school suspension, or DAEP [see FOC]. *Education Code 37.002(c)*

Conference by Third Day Required

Not later than the third class day after the day on which a student is removed from class by the teacher under the above provision or by the school principal or other appropriate administrator under the Student Code of Conduct, the campus behavior coordinator or other appropriate administrator shall schedule a conference among the campus behavior coordinator or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the campus behavior coordinator, after consideration of the mitigating factors (see below), shall order the placement of the student for a period consistent with the Student Code of Conduct. *Education Code 37.009(a)*

Appeals

A student may appeal the student's removal from class described above to:

1. The school's placement review committee [see Placement Review Committee, below]; or
2. The campus's threat assessment and safe and supportive school team, in accordance with a district policy providing for such an appeal to be made to the team.

Education Code 37.002(f)

If district policy allows a student to appeal to the board or the board's designee, a decision of the campus behavior coordinator or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. *Education Code 37.009(a)*

Placement Length

The period of the placement may not exceed one year unless, after a review, the district determines that the student is a threat to the safety of other students or to district employees. The student may

not be returned to the regular class pending the required conference. *Education Code 37.009(a)*

Mitigating Factors

The CBC must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct. *Education Code 37.009(a)*

[See Student Code of Conduct, item 4, at FO(LEGAL) for mitigating factors.]

Prohibitions on Activities

The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.002(c)*

Note: A power granted to a campus principal under Education Code Chapter 37, Subchapter A may be exercised by the CBC.

Return to Class

The principal may not return the student to the class of the teacher who removed the student without the teacher's written consent, unless the placement review committee determines that such placement is the best or only alternative available and, not later than the third class day after the day on which the student was removed from class, a conference in which the teacher has been provided an opportunity to participate has been held. [See Conference by Third Day Required, above]

Return to Class Plan

The principal may not return the student to that teacher's class unless the teacher provides written consent for the student's return or a return to class plan has been prepared for that student. The principal may only designate an employee of the school whose primary duties do not include classroom instruction to create a return to class plan. A return to class plan must be created before or at the conference described by that subsection. A plan created before the conference must be discussed at the conference.

The commissioner of education shall adopt a model return to class plan for use by a district in creating a return to class plan for a student.

Education Code 37.002(c), (c-1), (c-2)

Return After Assault

If the teacher removed the student from class because the student engaged in the elements of an offense listed in Education Code 37.007(a)(2)(A) or (a)(4) (assault, sexual assault, assault against a district employee or volunteer) against the teacher, the student

may not be returned to the teacher's class without the teacher's written consent. The teacher may not be coerced to consent.

Education Code 37.002(c), (d)

Placement Review Committee

Each school shall establish a three-member committee to determine the placement of a student when a teacher refuses the return of a student to the teacher's class. The committee shall make recommendations to the district regarding readmission of expelled students.

Composition

Committee members shall be appointed as follows:

1. Campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and
2. The principal shall choose one member from the professional staff of a campus.

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

Education Code 37.003

Right to Appeal

The principal, campus behavior coordinator, or other appropriate administrator shall notify a student who has been removed from class and the student's parent of the student's right to appeal the decision of the committee. [See Appeals, above] *Education Code 37.002(f-1)*

Removal by School Bus Driver

The driver of a school bus transporting students to or from school or a school-sponsored or school-related activity may send a student to the principal's office to maintain effective discipline on the school bus.

The principal shall respond by employing appropriate discipline management techniques consistent with the Student Code of Conduct.

Education Code 37.0022

Note: See FOF for provisions concerning students with disabilities.

Suspension Authorized

The principal or other appropriate administrator may suspend a student who engages in conduct identified in the Student Code of Conduct as conduct for which a student may be subject to an in-school or out-of-school suspension. *Education Code 37.005(a)*

In-School Suspension

An in-school suspension under this section is not subject to any time limit. *Education Code 37.005(b)*

No Time Limit

Placement Review

The principal or other appropriate administrator shall review the in-school suspension of a student at least once every 10 school days after the date the suspension begins to evaluate the educational progress of the student and to determine if continued in-school suspension is appropriate. If the principal or other appropriate administrator determines that continued in-school suspension is appropriate, the principal or other appropriate administrator shall document the determination. *Education Code 37.005(b-1)*

Support Services

The district shall provide a student subject to an in-school suspension with appropriate behavioral support services and comparable educational services as the student would receive in the classroom.

If the student receives special education services, the student must continue to receive special education and related services specified in the student's individualized education program and have an opportunity to progress in the general curriculum. *Education Code 37.005(b-2)*

Out-of-School Suspension

An out-of-school suspension may not exceed three school days. *Education Code 37.005(b)*

Maximum Length

[See FO for provisions regarding coursework to students in suspension.]

Students Below Grade 3

A student who is enrolled in a grade level below grade 3 may not be placed in out-of-school suspension unless while on school property or while attending a school-sponsored or school-related activity on or off of school property, the student engages in:

1. Conduct that contains the elements of an offense related to weapons under Penal Code 46.02 or 46.05;
2. Conduct that threatens the immediate health and safety of other students in the classroom;
3. Documented conduct that results in repeated or significant disruption to the classroom; or
4. Selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of:

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

b. A dangerous drug, as defined by Health and Safety Code Chapter 483; or

c. An alcoholic beverage, as defined by Alcoholic Beverage Code 1.04.

Education Code 37.005(c)

Students Who Are Homeless

A district may not place a student who is homeless in out-of-school suspension unless the student engages in conduct described at items 1–4, above, while on school property or while attending a school-sponsored or school-related activity on or off of school property. The campus behavior coordinator may coordinate with the district's homeless education liaison to identify appropriate alternatives to out-of-school suspension for a student who is homeless. In Education Code 37.005(d), "student who is homeless" has the meaning assigned to the term "homeless children and youths" under 42 U.S.C. Section 11434a. *Education Code 37.005(d)*

Alternative Placement Request

On receiving a written request from the student's parent, the principal or other appropriate administrator may at the principal's or other appropriate administrator's sole discretion reassign a student placed in out-of-school suspension to an in-school suspension if the student's parent demonstrates through supporting information and documentation that the parent is unable to provide suitable supervision for the student during school hours during the period of the suspension.

The alternative placement provided by this provision may be used only in extenuating circumstances and may not be used as a routine replacement for out-of-school suspension.

The district shall maintain documentation of each reassignment under this subsection, including the parent's request, the reason for the parent's unavailability, and the supporting information and documentation.

Education Code 37.005(c-2)

Positive Behavior Program

A district may develop and implement a program, in consultation with campus behavior coordinators employed by the district [see FO] and representatives of a regional education service center, that provides a disciplinary alternative for a student enrolled in a grade level below grade 3 who engages in conduct described by Education Code 37.005(a) [at Suspension Authorized, above] and

is not subject to 37.005(c) [at Students below Grade 3, above]. The program must:

1. Be age-appropriate and research-based;
2. Provide models for positive behavior;
3. Promote a positive school environment;
4. Provide alternative disciplinary courses of action that do not rely on the use of in-school suspension, out-of-school suspension, or placement in a disciplinary alternative education program to manage student behavior; and
5. Provide behavior management strategies including:
    a. Positive behavioral intervention and support;
    b. Trauma-informed practices;
    c. Social and emotional learning;
    d. A referral for services, as necessary; and
    e. Restorative practices.

A district may annually conduct training for district staff on the program adopted.

Education Code 37.0013

Table of Contents

Removal Under Student Code of Conduct....3
Mandatory Placement in DAEP....3
School-Related Misconduct....3
Retaliation....4
Conduct Unrelated to School....4
Sexual Assault of Another Student....7
Permissive Removal....8
Non-Title 5 Felony....8
Bullying....8
Disruption....8
E-Cigarette Possession or Use....9
One Year After Conduct....9
Certain Organization and Gang Membership and Solicitation....9
Older Students....9
Placement of Younger Students....9
Students Younger Than Six....9
Process for Removal....10
Conference....10
Mitigating Factors....10
Order....10
Appeal....10
Right to Request a Special Education Evaluation....10
Term of Removal....10
Beyond Grading Period or 60 Days....11
Beyond End of School Year....11
Order of Removal....11
DAEP at Capacity....12
Placement of Student Who Engaged in Violent Conduct....12
Determination of Violent Conduct....12
Completion of Proceedings Upon Withdrawal....14
Enrollment in Another District....14
Out-of-State Placement....15
Court-Ordered Placement....15
School Activities....16

Placement After Court Disposition....16
Not Guilty/ Insufficient Evidence/Charges Dropped....16
Appeal After Placement Upheld....17
120-Day Review of Status....17
Additional Proceedings....17
Reporting....17

Removal Under Student Code of Conduct

The Student Code of Conduct must specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program (DAEP). *Education Code 37.001(a)(2)*

Mandatory Placement in DAEP

A student shall be removed from class and placed in a DAEP if the student engages in conduct described in Education Code 37.006 that requires placement, subject to the requirements of Education Code 37.009(a) [see Process for Removal and Mitigating Factors, below]. *Education Code 37.006*

[For additional factors that must be considered in each decision concerning suspension, removal to a DAEP, expulsion, or placement in a juvenile justice alternative education program (JJAEP), see FO and the Student Code of Conduct.]

School-Related Misconduct

A student shall be removed from class and placed in a DAEP if the student engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Penal Code 42.06, or terroristic threat under Penal Code 22.07.

A student shall also be removed from class and placed in a DAEP if the student commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off school property:

1. Engages in conduct punishable as a felony.
2. Engages in conduct that contains the elements of assault, under Penal Code 22.01(a)(1).
3. Sells, gives, or delivers to another person or possesses, uses, or is under the influence of:
    a. A controlled substance, as defined by the Texas Controlled Substances Act, Health and Safety Code Chapter 481, or by 21 U.S.C. 801, et seq., excluding marijuana, as defined by Health and Safety Code 481.002, or tetrahydrocannabinol, as defined by Department of Public Safety rule;
    b. A dangerous drug, as defined by the Texas Dangerous Drug Act, Health and Safety Code Chapter 483.
4. Possesses, uses, or is under the influence of, or sells, gives, or delivers to another person marijuana or tetrahydrocannabinol, as defined above;
5. Sells, gives, or delivers to another person an e-cigarette, as defined by Health and Safety Code 161.081 [see FNCD];

6. Sells, gives, or delivers to another person an alcoholic beverage, as defined by Alcoholic Beverage Code 1.04, or commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage.

7. Engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Health and Safety Code 485.031 through 485.034.

8. Engages in conduct that contains the elements of the offense of public lewdness under Penal Code 21.07.

9. Engages in conduct that contains the elements of the offense of indecent exposure under Penal Code 21.08.

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

Education Code 37.006(a)

Exception Removal to a DAEP for school-related misconduct is not required if the student is expelled for the same conduct. *Education Code 37.006(m)*

Retaliation A student shall be removed from class and placed in a DAEP if the student engages in conduct on or off school property against any school employee or volunteer as defined by Education Code 22.053 containing the elements of:

1. Retaliation under Penal Code 36.06; or

2. Harassment under Penal Code 42.07.

Education Code 37.006(b)

Conduct Unrelated to School In addition to the circumstances listed above, a student shall be removed from class and placed in a DAEP based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

1. The student receives deferred prosecution under Family Code 53.03 for conduct defined as any of the following offenses:

   a. A felony offense under Penal Code Title 5;

   b. The offense of deadly conduct under Penal Code 22.05;

   c. The felony offense of aggravated robbery under Penal Code 29.03;

d. The offense of disorderly conduct involving a firearm under Penal Code 42.01(a)(7) or (8); or

e. The offense of unlawfully carrying weapons under Penal Code 46.02, except for an offense punishable as a Class C misdemeanor;

2. A court or jury finds that the student has engaged in delinquent conduct under Family Code 54.03 for conduct defined as an offense listed in item 1; or

3. The superintendent or designee has a reasonable belief that the student has engaged in conduct defined as an offense listed in item 1.

Education Code 37.006(c)

Reasonable Belief

In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense, a superintendent or a superintendent's designee may consider all available information and must consider the information furnished under Code of Criminal Procedure Article 15.27 other than information requested under Code of Criminal Procedure Article 15.27(k-1). *Education Code 37.006(e); Code of Criminal Procedure 15.27(a)* [See GRAA]

Title 5 Felonies

The following are felony offenses listed in Penal Code, Title 5, Offenses Against the Person.

1. Murder. *Penal Code 19.02*

2. Capital Murder. *Penal Code 19.03*

3. Manslaughter. *Penal Code 19.04*

4. Criminally Negligent Homicide. *Penal Code 19.05*

5. Unlawful Restraint, if:

   a. The person restrained was younger than 17 years of age; or

   b. The actor recklessly exposes the victim to a substantial risk of serious bodily injury; restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty; or while in custody restrains any other person. *Penal Code 20.02*

6. Kidnapping. *Penal Code 20.03*

7. Aggravated Kidnapping. *Penal Code 20.04*
8. Smuggling of Persons. *Penal Code 20.05*
9. Continuous Smuggling of Persons. *Penal Code 20.06*
10. Trafficking of Persons. *Penal Code 20A.02*
11. Continuous Trafficking of Persons. *Penal Code 20A.03*
12. Continuous Sexual Abuse of Young Child or Disabled Individual. *Penal Code 21.02*
13. Bestiality. *Penal Code 21.09*
14. Indecency with a Child. *Penal Code 21.11*
15. Improper Relationship between Educator and Student. *Penal Code 21.12*
16. Invasive Visual Recording. *Penal Code 21.15*
17. Unlawful Disclosure or Promotion of Intimate Visual Material. *Penal Code 21.16*
18. Voyeurism, if the victim was younger than 18 years of age at the time of the offense. *Penal Code 21.17*
19. Sexual Coercion. *Penal Code 21.18*
20. Assault, if the offense is punishable as a felony. *Penal Code 22.01*
21. Sexual Assault. *Penal Code 22.011*
22. Aggravated Assault. *Penal Code 22.02*
23. Aggravated Sexual Assault. *Penal Code 22.021*
24. Injury to a Child, Elderly Individual, or Disabled Individual. *Penal Code 22.04*
25. Abandoning or Endangering a Child, Elderly Individual, or Disabled Individual. *Penal Code 22.041*
26. Deadly Conduct, if the person knowingly discharges a firearm at or in the direction of one or more individuals, or at or in the direction of a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied. *Penal Code 22.05*
27. Terroristic Threat, if the actor threatens to commit any offense involving violence to any person or property with intent to:

a. Place any person in fear of imminent serious bodily injury if the actor knows the person is a peace officer or judge;

b. Prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place if the prevention or interruption causes pecuniary loss of $1,500 or more to the owner;

c. Cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;

d. Place the public or a substantial group of the public in fear of serious bodily injury; or

e. Influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision. *Penal Code 22.07*

28. Aiding Suicide, if the conduct causes suicide or attempted suicide that results in serious bodily injury. *Penal Code 22.08*

29. Tampering with Consumer Product. *Penal Code 22.09*

30. Harassment by Persons in Certain Facilities or of Public Servant. *Penal Code 22.11*

Sexual Assault of Another Student

A student shall be removed from class and placed in a DAEP or juvenile justice alternative education program (JJAEP) if:

1. The student was convicted of, received adjudication for, or was placed on probation for sexual assault of another student who was a young child or disabled individual while the students were assigned to the same campus, regardless of whether the assault occurred on or off school property;

2. The parent of the victim of the assault has requested that the student be transferred to a campus other than that to which the victim is assigned; and

3. There is only one campus in a district serving the grade level in which the student is enrolled.

Education Code 25.0341, 37.0051(a) [See FDE at Sexual Assault Transfer—Transfer of Assailant]

A limitation imposed by Education Code Chapter 37 on the length of placement in a DAEP or a JJAEP does not apply to a placement under this provision. *Education Code 37.0051(b)*

Permissive Removal

Non-Title 5 Felony

A student may be removed from class and placed in a DAEP based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

1. The superintendent or designee has a reasonable belief [see Reasonable Belief, above] that the student has engaged in conduct defined as a felony offense other than aggravated robbery under Penal Code 29.03, or those offenses listed in Penal Code Title 5 [see above at Title 5 Felonies]; and
2. The continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

Education Code 37.006(d)-(e)

Bullying

A student may be removed from class and placed in a DAEP if the student:

1. Engages in bullying that encourages a student to commit or attempt to commit suicide;
2. Incites violence against a student through group bullying; or
3. Releases or threatens to release intimate visual material of a minor or student who is 18 years of age or older without the student's consent.

Nothing in this provision exempts a school from reporting a finding of intimate visual material of a minor.

Definitions

Bullying

"Bullying" has the meaning assigned by Education Code 37.0832. [See FFI]

Intimate Visual Material

"Intimate visual material" has the meaning assigned by Civil Practice and Remedies Code 98B.001.

Education Code 37.0052

Disruption

A student may be removed from class and placed in a disciplinary alternative education program if the student:

1. Engages in conduct that contains the elements of the offense of disruptive activities under Education Code 37.123;
2. Engages in conduct that contains the elements of the offense of disruption of classes under Education Code 37.124, only if:
    a. The student is 12 years of age or older at the time of the conduct; and

b. The conduct is intentional and repeated.

Education Code 37.006(d), (d-1); 37.124(d)

E-Cigarette Possession or Use

A student may be removed from class and placed in a disciplinary alternative education program if the student possesses or uses an e-cigarette, as defined by Health and Safety Code 161.081.

If a student who possesses or uses an e-cigarette is not placed in a disciplinary alternative education program for the first-time offense, the student shall be placed in in-school suspension for a period of at least 10 school days. [For requirements related to in-school suspension, see FOB.]

Education Code 37.006(d)

One Year After Conduct

A principal or other appropriate administrator may, but is not required to, remove a student to a DAEP for off-campus conduct, for which removal would otherwise be required, if the principal or other appropriate administrator did not have knowledge of the conduct before the first anniversary of the date the conduct occurred. *Education Code 37.006(n)*

Certain Organization and Gang Membership and Solicitation

A board or an educator shall recommend placing in DAEP any student who commits the misdemeanor offenses described in Education Code 37.121(a) and (c), regarding membership in or solicitation to join a public school fraternity, sorority, secret society, or gang [see FNCC]. *Education Code 37.121(b)*

Older Students

A person who is 21 years of age or older and is admitted by a district for the purpose of completing the requirements for a diploma is not eligible for placement in a DAEP if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in such conduct, the district shall revoke the student's admission. *Education Code 25.001(b-1)*

Placement of Younger Students

A student who is younger than 10 shall be removed from class and placed in a DAEP if the student engages in conduct for which expulsion would be required by Section 37.007. *Education Code 37.006(f), .007(e)* [See FOD]

Students Younger Than Six

Notwithstanding any other provision of the Education Code, a student who is younger than six years of age may not be removed from class and placed in a DAEP, except that a student younger than six years of age who has been expelled pursuant to the Gun Free Schools Act [see FOD] shall be provided educational services in a DAEP. *Education Code 37.006(l), .007(e)(2)*

Process for Removal

Conference

Not later than the third class day after a student is removed by a teacher or by the school principal or other appropriate administrator, the campus behavior coordinator (CBC) or other appropriate administrator shall schedule a conference among the CBC or other appropriate administrator, the student's parent or guardian, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular class pending the conference.

Mitigating Factors

Before ordering removal, the CBC must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action.

Order

Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the CBC, after considering any mitigating factors under Education Code 37.001(a)(4) [see FO], shall order the placement of the student for a period consistent with the Student Code of Conduct.

Appeal

If district policy allows a student to appeal to the board or the board's designee a decision of the CBC or other appropriate administrator, the decision of the board or the board's designee is final and may not be appealed.

Education Code 37.009(a) [See Student Code of Conduct]

Right to Request a Special Education Evaluation

On the placement of a student in a DAEP, the district shall provide information to the student's parent or person standing in parental relation to the student regarding the process for requesting a full individual and initial evaluation of the student under Education Code 29.004 [see EHBAA]. *Education Code 37.006(p)*

Term of Removal

The period of the placement after removal may not exceed one year unless, after a review, a district determines that the student is a threat to the safety of other students or to district employees. *Education Code 37.009(a)*

A board or designee shall set a term for a student's placement in a DAEP. If the period of placement is inconsistent with the guidelines in the Student Code of Conduct, the order must give notice of the inconsistency. The period of placement in a DAEP may not exceed

one year unless, after a review, a district determines that the student is a threat to the safety of other students or to district employees or extended placement is in the best interest of the student. *Education Code 37.009(d)*

Beyond Grading Period or 60 Days

If placement in a DAEP is to extend beyond 60 days or the end of the next grading period, whichever is earlier, the student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before a board or designee.

No Appeal

Any decision of a board or designee concerning placement beyond 60 days or the end of the next grading period is final and cannot be appealed.

Education Code 37.009(b)

Beyond End of School Year

Before a student may be placed in a DAEP for a period that extends beyond the end of the school year, a board or designee must determine that:

1. The student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or another individual; or
2. The student has engaged in serious or persistent misbehavior that violates the Student Code of Conduct.

Education Code 37.009(c)

Order of Removal

A board or designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a DAEP. *Education Code 37.009(g)*

Not later than the second business day after the date of the removal conference, a board or designee shall deliver a copy of the order placing the student in a DAEP and any information required under Family Code 52.04 to the authorized officer of the juvenile court in the county in which the juvenile resides. *Education Code 37.010(a)*

Activities

The terms of a placement under Education Code 37.006 must prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.006(g)*

In addition to any notice required under Code of Criminal Procedure 15.27 [see GRAA], a principal or designee shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in conduct for which DAEP placement must or may be ordered.

Each educator shall keep the information confidential from any person not entitled to the information, except that the educator may share the information with the student's parent or guardian as provided by state or federal law. An educator's certificate may be suspended or revoked for intentional failure to keep such information confidential.

Education Code 37.006(o)

DAEP at Capacity

If a DAEP is at capacity at the time a CBC is deciding placement for a student who engaged in conduct described under Education Code 37.006(a)(2)(C-1) (possession or use of marijuana), (C-2) (possession, use, delivery of an e-cigarette), (D) (delivery of alcohol), or (E) (abuse of volatile chemical), the student shall be placed in in-school suspension; and if a position becomes available in the program before the expiration of the period of the placement, transferred to the program for the remainder of the period.

Placement of Student Who Engaged in Violent Conduct

If a DAEP is at capacity at the time a CBC is deciding placement for a student who engaged in conduct described under Education Code 37.007 that constitutes violent conduct [see below at Determination of Violent Conduct], a student who has been placed in the program for conduct described under Education Code 37.006(a)(2)(C-1), (C-2), (D), or (E) (above) may be removed from the program and placed in in-school suspension to make a position in the program available for the student who engaged in violent conduct. If removed from the program and a position in the program becomes available before the expiration of the period of the placement, the student shall be returned to the program for the remainder of the period.

Determination of Violent Conduct

Violent conduct means an act by a student against another person that is intended to result in physical harm, bodily injury, or assault or a threat that reasonably places the other person in fear of imminent physical harm, bodily injury, or assault. A CBC may determine whether a specific instance of conduct listed below rises to the level of violent conduct for purposes of determining placement in a DAEP.

1. The student engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Penal Code 42.06, or terroristic threat under Penal Code 22.07.

2. While on or within 300 feet of school property, or while attending a school-sponsored or school-related activity on or off school property, the student engages in conduct that contains the elements of the offense of assault under Penal Code 22.01(a)(1), including when committed as an act of retaliation

against an employee or volunteer, as described in Education Code 37.007(d).

3. While on or within 300 feet of school property or while attending a school-sponsored or school-related activity on or off school property, the student engages in conduct that contains the elements of the offense of deadly conduct under Penal Code 22.05.

4. While within 300 feet of school property, or when committed as an act of retaliation against an employee or volunteer, whether the conduct occurs on or off school property or while attending a school-sponsored or school-related activity on or off school property, the student engages in:

    a. Conduct that contains the elements of the offense of unlawful carrying of weapons under Penal Code 46.02;

    b. An offense relating to prohibited weapons under Penal Code 46.05;

    c. Aggravated assault under Penal Code 22.02;

    d. Sexual assault under Penal Code 22.011;

    e. Aggravated sexual assault under Penal Code 22.021;

    f. Arson under Penal Code 28.02;

    g. Murder under Penal Code 19.02;

    h. Capital murder under Penal Code 19.03;

    i. Criminal attempt to commit murder or capital murder under Penal Code 15.01;

    j. Indecency with a child under Penal Code 21.11;

    k. Aggravated kidnapping under Penal Code 20.04;

    l. Aggravated robbery under Penal Code 29.03;

    m. Manslaughter under Penal Code 19.04;

    n. Criminally negligent homicide under Penal Code 19.05;

    o. Continuous sexual abuse of a young child or an individual with disabilities under Penal Code 21.02;

    p. Selling, giving, delivering to another person, possessing, using, or being under the influence of a controlled substance or dangerous drug, excluding marijuana or tetrahydrocannabinol; or

q. Possessing a firearm, as defined by 18 U.S.C. 921.

5. The student engages in conduct against another student, without regard to whether the conduct occurs on or off school property or while attending a school-sponsored or school-related activity on or off school property, that contains the elements of:

   a. The offense of aggravated assault under Penal Code 22.02;

   b. Sexual assault under Penal Code 22.011;

   c. Aggravated sexual assault under Penal Code 22.021;

   d. Murder under Penal Code 19.02;

   e. Capital murder under Penal Code 19.03; or

   f. Criminal attempt to commit murder or capital murder under Penal Code 15.01.

6. While placed in a DAEP and on the program campus, the student engages in documented serious misbehavior despite documented behavioral interventions.

Education Code 37.009(a-1)-(a-2); 19 TAC 103.1205

Completion of Proceedings Upon Withdrawal

If a student withdraws from a district before an order for placement in a DAEP is entered, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student re-enrolls in the district the same or subsequent school year, the district may enforce the order at that time except for any period of the placement that has been served by the student in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order. *Education Code 37.009(i)*

Enrollment in Another District

If a student placed in a DAEP enrolls in another district before the expiration of the placement, a board shall provide to the district in which the student enrolls a copy of the placement order at the same time it provides other records. The district in which the student enrolls shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order. Each educator shall keep the information confidential from any person not entitled to the information, except that the educator may share the information with the student's parent or guardian as provided by state or federal law.

The district in which the student enrolls may continue the placement or allow the student to attend regular classes without completing the period of placement. [See FO] The district in which the student enrolls may take any of these actions if:

1. The student was placed in a DAEP by an open-enrollment charter school and the charter school provides the district a copy of the placement order; or
2. The student was placed in a DAEP by a district in another state and:
    a. The out-of-state district provides a copy of the placement order; and
    b. The grounds for placement are the same as grounds for placement in the enrolling district.

Education Code 37.008(j)

Out-of-State Placement

If a student was placed in a DAEP in another state for more than one year and the enrolling district continues the placement under Education Code 37.008(j), the enrolling district shall reduce the period of placement so that the aggregate period does not exceed one year unless the enrolling district determines that:

1. The student is a threat to the safety of other students or to district employees; or
2. Extended placement is in the best interest of the student.

Education Code 37.008(j-1)

Court-Ordered Placement

Unless a board and the juvenile board for the county in which a district's central administrative office is located have entered into a memorandum of understanding concerning the juvenile probation department's role in supervising and providing other support services for students in DAEP programs:

1. A court may not order a student expelled under Section 37.007 to attend a school district DAEP as a condition of probation;
2. A court may not order a student to attend a DAEP without a district's consent, until the student has successfully completed any sentencing requirements, if the court has ordered the student to attend a DAEP as a condition of probation once during a school year and the student is referred to juvenile court again during that school year.

Education Code 37.010(c)-(d)

School Activities

Any court placement in a DAEP must prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.010(e)*

Placement After Court Disposition

After the student has successfully completed any court disposition requirements, including conditions of deferred prosecution or conditions required by the prosecutor or probation department, a district may not refuse to admit the student if the student meets the requirements for admission into the public schools. A district may place the student in the DAEP.

Notwithstanding Education Code 37.002(d) [see FOA], the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

Education Code 37.010(f)

Not Guilty/ Insufficient Evidence/Charges Dropped

The office of the prosecuting attorney or the office or official designated by the juvenile board shall, within two working days, notify the school district that removed a student to a DAEP under Education Code 37.006 if:

1. Prosecution of a student was refused for lack of prosecutorial merit or insufficient evidence, and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

2. A court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

On receipt of the notice, the superintendent or designee shall review the student's placement in the DAEP. The student may not be returned to the regular classroom pending the review. The superintendent or designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or designee receives notice from the office or official designated by the court.

After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or designee may continue the student's placement in the DAEP if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

Education Code 37.006(h); Code of Criminal Procedure 15.27(g)

Appeal After Placement Upheld

The student or the student's parent or guardian may appeal a superintendent's decision to the board. The student may not be returned to the regular classroom pending the appeal. A board shall, at the next scheduled meeting, review the notice provided by the office of the prosecuting attorney or the office or official designated by the juvenile board; receive information from the student, the student's parent or guardian, and the superintendent or designee; and confirm or reverse the superintendent's decision. The board shall make a record of the proceedings.

If a board confirms the decision, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner of education. The student may not be returned to the regular classroom pending the appeal to the commissioner.

Education Code 37.006(i)-(j)

120-Day Review of Status

A student placed in a DAEP shall be provided a review of the student's status, including a review of the student's academic status, by a board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress toward meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required to provide a course in the DAEP, except as required by Education Code 37.008(l). [See FOCA] At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent. *Education Code 37.009(e)*

Additional Proceedings

If, during the term of placement, a student engages in additional conduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted and the principal or board, as appropriate, may enter an additional order. *Education Code 37.009(j)*

Reporting

A district may include the number of students removed to a DAEP in its annual performance report. *Education Code 39.306(e)(5)* [See AIB]

Note: See FOF for provisions concerning students with disabilities.

Students Younger Than 10

A student younger than 10 years of age shall not be expelled but shall be placed in a disciplinary alternative education program (DAEP). *Education Code 37.007(e)(2), (h)*

Overage Students

A person who is 21 years of age or older and is admitted by a district for the purpose of completing the requirements for a diploma is not eligible for placement in a juvenile justice alternative education program (JJAEP) if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in such conduct, a district shall revoke the student's admission. *Education Code 25.001(b-1)*

Mandatory Expulsion

School Related

Subject to the requirements of Education Code 37.009(a) [see Preplacement Proceedings, below], a student shall be expelled if the student, on or off of school property:

1. Engages in conduct that contains the elements of the offense of unlawfully carrying weapons under Penal Code 46.02 or elements of an offense relating to prohibited weapons under Penal Code 46.05 [see FNCG];

2. Engages in conduct that contains the elements of the offense of aggravated assault, sexual assault, aggravated sexual assault, arson, murder, capital murder, criminal attempt to commit murder or capital murder, indecency with a child, kidnapping, aggravated kidnapping, burglary, robbery, aggravated robbery, manslaughter, criminally negligent homicide, or continuous sexual abuse of a young child or disabled individual, as those offenses are defined in the Penal Code;

3. Commits a drug- or alcohol-related offense described at Education Code 37.006(a)(2)(C), if that conduct is punishable as a felony;

4. Engages in conduct that contains the elements of the offense of assault under Penal Code 22.01(a)(1) against a school district employee or volunteer as defined by Education Code 22.053; or

5. Engages in conduct that contains the elements of the offense of exhibiting, using, or threatening to exhibit or use a firearm under Education Code 37.125.

Education Code 37.007(a)

Exception

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

1. At an approved target range facility that is not located on a school campus; and

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

This section does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored shooting sports competition or a shooting sports educational activity.

Education Code 37.007(k), (l)

Federal Firearms Offense

In accordance with the Gun-Free Schools Act, a district shall expel a student who brings a firearm, as defined by federal law, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that the superintendent may modify in writing the length of expulsion in the case of an individual student.

Exception

This provision shall not apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the district and the district adopts appropriate safeguards to ensure student safety. [See also GKA].

Provision of Educational Services

A district or other local educational agency shall provide educational services to an expelled student in a DAEP if the student is younger than 10 years of age on the date of expulsion. A district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a DAEP.

20 U.S.C. 7961; Education Code 37.007(e)

Definitions

For purposes of this provision:

School

"School" means any setting that is under the control and supervision of a district for the purpose of student activities approved and authorized by the district. *20 U.S.C. 7961(f)*

Firearm

"Firearm" means:

1. Any weapon (including a starter gun), which will or is designed to or which may readily be converted to expel a projectile by the action of an explosive;

2. The frame or receiver of any such weapon;

3. Any firearm muffler or firearm silencer; or

4. Any destructive device. "Destructive device" means any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile hav-

ing an explosive or incendiary charge of more than one-quarter ounce, mine, or device similar to any of the preceding described devices. It also means any type of weapon (other than a shotgun shell or a shotgun that is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and any combination of parts either designed or intended for use in converting any device into a destructive device as described in this item, and from which a destructive device may be readily assembled.

18 U.S.C. 921, 20 U.S.C. 7961(b)(3)

Discretionary Expulsion

Threats

A student may be expelled if the student engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Penal Code 42.06, or terroristic threat under Penal Code 22.07.

School-Related Conduct

A student may be expelled if the student, while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

1. Sells, gives, or delivers to another person, or possesses, uses, or is under the influence of any amount that is not punishable as felony of:
    a. Marijuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. section 801 et seq.; or
    b. A dangerous drug, as defined by Chapter 483, Health and Safety Code; or
    c. An alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.
2. Engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Health and Safety Code 485.031-485.034.
3. Engages in conduct that contains the elements of the offense of deadly conduct under Penal Code 22.05.

Education Code 37.007(b)(1)-(2)

Possession of Firearm Within 300 Feet of School

A student may be expelled if the student, while within 300 feet of school property, as measured from any point on the school's real property boundary line, engages in possession of a firearm, as de-

fined by 18 U.S.C. sec. 921 [see Federal Firearm Offense, above]. *Education Code 37.007(b)(3)*

Bullying

A student may be removed from class and expelled if the student:

1. Engages in bullying that encourages a student to commit or attempt to commit suicide;
2. Incites violence against a student through group bullying; or
3. Releases or threatens to release intimate visual material of a minor or student who is 18 years of age or older without the student's consent.

Nothing in this provision exempts a school from reporting a finding of intimate visual material of a minor.

Definitions

Bullying

"Bullying" has the meaning assigned by Education Code 37.0832. [See FFI]

Intimate Visual Material

"Intimate visual material" has the meaning assigned by Civil Practice and Remedies Code 98B.001.

Education Code 37.0052

Criminal Mischief

A district may use its discretion to expel a student who has engaged in conduct that contains the elements of criminal mischief, as defined in the Penal Code, if the conduct is punishable as a felony. Regardless of whether the student is expelled, a district shall refer the student to the authorized officer of the juvenile court. *Education Code 37.007(f)*

Breach of Computer Security

A student may be expelled if the student engages in conduct that contains the elements of the offense of breach of computer security under Penal Code 33.02 if:

1. The conduct involves accessing a computer, computer network, or computer system owned by or operated on behalf of a school district; and
2. The student knowingly alters, damages, or deletes school district property or information; or commits a breach of any other computer, computer network, or computer system.

Education Code 37.007(b)(4)

Serious Misbehavior in DAEP

A student placed in a DAEP who engages in documented serious misbehavior while on the DAEP campus despite documented behavioral interventions may be removed from class and expelled.

"Serious misbehavior" means:

1. Deliberate violent behavior that poses a direct threat to the health or safety of others;
2. Extortion, meaning the gaining of money or other property by force or threat;
3. Conduct that constitutes coercion, as defined by Penal Code 1.07; or
4. Conduct that constitutes the offense of:
    a. Public lewdness under Penal Code 21.07;
    b. Indecent exposure under Penal Code 21.08;
    c. Criminal mischief under Penal Code 28.03;
    d. Personal hazing under Education Code 37.152; or
    e. Harassment, under Penal Code 42.07(a)(1), of a student or district employee.

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

Education Code 37.007(c), .010(b)

Consideration of Virtual Education as Alternative to Expulsion

Before a school district may expel a student, the district must consider the appropriateness and feasibility of, as an alternative to expulsion, enrolling the student in a full-time hybrid program, full-time virtual program, full-time hybrid campus, or full-time virtual campus. [See EHDE for definitions.] This requirement does not apply to a student expelled under Education Code 37.0081 or 37.007(a), (d), or (e). *Education Code 37.0071*

Pre-placement Proceedings

Conference

Not later than the third class day after a student is removed by a teacher or by the school principal or other appropriate administrator, the campus behavior coordinator (CBC) or other appropriate administrator shall schedule a conference among the CBC or other appropriate administrator, the student's parent or guardian, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular class pending the conference.

Mitigating Factors Before Ordering Removal

Before ordering removal, the CBC must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially im-

pairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action.

Order the Placement

Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the CBC, after considering any mitigating factors under Education Code 37.001(a)(4) [see FO], shall order the placement of the student for a period consistent with the Student Code of Conduct.

Education Code 37.009(a) [See Student Code of Conduct]

Expulsion Proceedings

Due Process

Before a student may be expelled, a board or its designee shall provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. *Education Code 37.009(f)*

The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved. Federal due process requires notice and some opportunity for hearing.

Notice

The notice should contain a statement of the specific charges and grounds that, if proven, would justify expulsion. In some cases, the student should be given the names of the witnesses against him or her and an oral or written report on the facts to which each witness testifies.

Hearing

The rights of the student may properly be determined upon the hearsay evidence of school administrators who investigate disciplinary infractions.

[See also *Brewer v. Austin Indep. Sch. Dist.*, 779 F.2d 260 (5th Cir. 1985); *Keough v. Tate Cnty. Bd. of Educ.*, 748 F.2d 1077 (5th Cir. 1984); *McClain v. Lafayette Cnty. Sch. Bd. of Educ.*, 673 F.2d 106 (5th Cir. 1982); *Tasby v. Estes*, 643 F.2d 1103 (5th Cir. 1981); *Boykins v. Fairfield Bd. of Educ.*, 492 F.2d 697 (5th Cir. 1974), cert. denied, 420 US 962 (1975); *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930 (1961)]

Representative

At the hearing, the student is entitled to be represented by the student's parent, guardian, or another adult who can provide guidance to the student and who is not an employee of the district. If a district makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, the district may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends.

Mitigating Factors Before Ordering Expulsion

Before ordering the expulsion of a student, the board or the board's designee must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the board concerns a mandatory or discretionary action. [See Student Code of Conduct, item 4, at FO(LEGAL) for additional mitigating factors.]

Appeal

If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a district court of the county in which the district's central administrative office is located.

Education Code 37.009(f)

Term of Expulsion

If the period of expulsion is inconsistent with the guidelines on length of expulsion in the Student Code of Conduct, the order must give notice of the inconsistency.

Beyond One Year

The period of expulsion may not exceed one year unless a district determines that:

1. The student is a threat to the safety of other students or to district employees; or
2. Extended placement is in the best interest of the student.

Education Code 37.009(h)

Notice of Expulsion Order

A board or its designee shall deliver a copy of the order expelling the student to the student and the student's parent or guardian. After such notification, the parent or guardian shall provide adequate supervision for the student during the period of expulsion. *Education Code 37.009(g)-(h)*

To Parent or Guardian

To Court

Not later than the second business day after the date an expulsion hearing is held, a board or its designee shall deliver a copy of the expulsion order and any information required under Family Code 52.04 to the authorized officer of the juvenile court in the county in which the student resides.

Family Code 52.04 requires the following information from a referring entity that is not a law enforcement agency or has not taken the child into custody:

1. All information in a district's possession pertaining to the identity of the child and the child's address; the name and address of the child's parent, guardian, or custodian; the names and

addresses of any witnesses; and the child's present whereabouts; and

2. A complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision.

Education Code 37.010(a); Family Code 52.04(a), .041(a)-(b)

To Juvenile Board

In a county that operates a JJAEP [see FODA], no student shall be expelled without written notification by a board or its designee to the juvenile board's designated representative. The notification shall be made not later than two business days following a board's determination that the student is to be expelled. Failure to timely notify the designated representative shall result in the child's duty to continue attending a district's educational program, which shall be provided to that child until such time as the notification to the designated representative is properly made. *Family Code 52.041*

To Staff

In addition to providing any notice required under Code of Criminal Procedure 15.27 [see GRA], a district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in expellable conduct.

Each educator shall keep the information confidential from any person not entitled to the information, except that the educator may share the information with the student's parent or guardian as provided by state or federal law. An educator's certificate may be suspended or revoked for intentional failure to keep such information confidential.

Education Code 37.007(g)

Completion of Proceeding Upon Withdrawal

If a student withdraws from a district before an order for expulsion is entered, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the district during the same or subsequent school year, the district may enforce the order at that time except for any period of the expulsion that has been served by the student in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order. *Education Code 37.009(i)*

Additional Proceedings

If, during the term of expulsion, a student engages in additional conduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted and the principal or board, as appropriate, may enter an additional order. *Education Code 37.009(j)*

Appeals

A decision by a board's designee to expel a student may be appealed to the board. If the hearing is not before the board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. *Education Code 37.009(f); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930 (1961)*

Restrictions on Court Orders

A court may not order an expelled student to attend a regular classroom, a regular campus, or a district DAEP as a condition of probation.

Exception

A court may order a student to attend a regular classroom, a regular campus, or a district DAEP if the district has entered into a memorandum of understanding (MOU) with the juvenile board for the county in which the district's central administrative office is located, concerning the juvenile probation department's role in supervising and providing other support services for students in DAEPs.

Education Code 37.010(c)

District Responsibility for Expelled Student

Students Not Eligible for Existing JJAEP

In a county that operates a JJAEP, a district is responsible for providing an immediate educational program to a student who engages in behavior for which expulsion is permitted but not required under Education Code 37.007, but who is not eligible for admission into the JJAEP in accordance with an MOU. [See FODA]

Contracting for Services

A district may provide the program, or the district may contract with a county juvenile board, a private provider, or one or more other school districts to provide the program.

Education Code 37.011(l)

Certain Districts

This provision applies to a district located in a county considered to be a county with a population of 125,000 or less because it has a population of more than 200,000 and less than 233,500; has five or more school districts located wholly within the county's boundaries; and has located in the county a JJAEP that, on May 1, 2011, served fewer than 15 students. A qualifying district shall provide educational services to a student who is expelled from school. The district is entitled to count the student in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. An educational placement under this section may include:

1. The district's DAEP.
2. A contracted placement with another school district, an open-enrollment charter school, an institution of higher education,

an adult literacy council, or a community organization that can provide an educational program that allows the student to complete the credits required for high school graduation.

An educational placement other than a district's DAEP is subject to the educational and certification requirements applicable to an open-enrollment charter school under Education Code Chapter 12, Subchapter D.

Education Code 37.011(a-3)-(a-5)

Return to Class

Early / Permissive

On the recommendation of the placement review committee, or on its own initiative, a district may readmit an expelled student while the student is completing any court disposition requirements.

Required

After an expelled student has successfully completed any court disposition requirements, including conditions of a deferred prosecution, or conditions required by the prosecutor or probation department, a district may not refuse to admit the student if the student meets the requirements for admission. [See FD] A district may place the student in a DAEP.

The student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

Education Code 37.010(f)

Expelled from Another District

If a student has been expelled from another school district, the expelling district shall provide to a district in which the student enrolls a copy of the expulsion order and the referral to the authorized officer of the juvenile court. A district in which the student enrolls may continue the expulsion under the terms of the order, may place the student in a DAEP for the period specified by the expulsion order, or may allow the student to attend regular classes without completing the period of expulsion.

Out-of-State Expulsion

A district may take any of the above actions if the student was expelled by a district in another state if:

1. The out-of-state district provides a copy of the expulsion order; and
2. The grounds for the expulsion are also grounds for expulsion in the district in which the student is enrolling.

Education Code 37.010(g)

If the student was expelled for more than one year and the enrolling district continues the expulsion or places the student in a

DAEP, the aggregate period of expulsion or placement may not exceed one year unless the district determines that:

1. The student is a threat to the safety of other students or to district employees; or

2. Extended placement is in the best interest of the student.

Education Code 37.010(g-1)

Note: See FOF for provisions concerning expulsion of students with disabilities.

Virtual Expulsion Program

The principal or other appropriate administrator may place a student who has been expelled under Education Code 37.007 or 37.0081 in a virtual expulsion program established by the district and provide virtual instruction and instructional materials for remote learning to the student only if:

1. The district is located in a county that operates a JJAEP or the school district contracts with the juvenile board of another county for the provision of a JJAEP, and the JJAEP rejects admission of the student or returns the student before the expiration of the discipline assignment; or

2. The district is not located in a county that operates a JJAEP and does not contract with the juvenile board of another county for the provision of a JJAEP.

A school district must ensure that, to the extent practicable in a virtual setting, the district's virtual expulsion program complies with the requirements for a disciplinary alternative education program under Education Code 37.008. [See FOC]

Equipment and Internet

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

Review of Placement

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

soon as practicable. If the principal or other appropriate administrator determines that continued placement is appropriate, the principal or other appropriate administrator shall document the determination.

Funding

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

The commissioner of education shall adopt rules providing for a method of taking attendance for students placed in a virtual expulsion program.

Teachers

A district may not require a teacher who provides virtual instruction to students in a virtual expulsion program to provide virtual instruction and in-class instruction for a course during the same class period. A teacher may not provide instruction for a virtual expulsion program course unless the teacher has completed a professional development course on virtual instruction.

The commissioner of education shall adopt rules requiring districts to provide basic professional development training for teachers providing instruction in a virtual expulsion program.

Education Code 37.0083

Meetings with Juvenile Board

A board or designee shall regularly meet with either:

1. The juvenile board for the county in which a district's central administrative office is located; or
2. The juvenile board's designee.

The meeting shall be called by the board president and shall address supervision and rehabilitative services appropriate for expelled students and students assigned to disciplinary alternative education programs (DAEPs).

Matters for discussion shall include:

1. Service by probation officers at the DAEP site;
2. Recruitment of volunteers to serve as mentors and provide tutoring services; and
3. Coordination with other social service agencies.

Education Code 37.013

Juvenile Justice Alternative Education Program

For the purposes of the following provisions, only a DAEP operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program (JJAEP).

Mandatory JJAEP

The juvenile board of a county with a population greater than 125,000 shall develop a JJAEP, subject to the approval of the Texas Juvenile Justice Department (TJJD).

Voluntary JJAEP

The juvenile board of a county with a population of 125,000 or less may develop a JJAEP. Such a JJAEP is not required to be approved by the TJJD. Further, it is not subject to Education Code 37.011(c), (d), (f), (g), (k) or (m).

Education Code 37.011(a), (k), (m)

County Population

A county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if:

1. The county had a population of 125,000 or less according to the 2000 federal census and the juvenile board of the county enters into, with the approval of the TJJD, a memorandum of understanding (MOU) with each school district within the county that:
    a. Outlines the responsibilities of the board and school districts in minimizing the number of students expelled without receiving alternative educational services; and
    b. Includes the coordination procedures required by Education Code 37.013, above.

2. Has a population of 195,000 or less; is adjacent to two counties, each of which has a population of more than 1.7 million; and has seven or more school districts located wholly within the county's boundaries.

3. Has a population of more than 200,000 and less than 233,500; has five or more school districts located wholly within the county's boundaries; and has located in the county a JJAEP that, on May 1, 2011, served fewer than 15 students.

Education Code 37.011(a-1)-(a-3)

Note: The following provisions apply to all districts that operate JJAEPs, whether voluntary or mandatory.

Placement of Students in JJAEP — Expelled Students

An expelled student shall, to the extent provided by law or by the MOU, immediately attend the educational program from the date of expulsion. *Education Code 37.010(a)* [See FOD]

Court-Ordered Placement

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

1. If the student is placed on probation under Family Code 54.04, order the student to attend the JJAEP in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;

2. If the student is placed on deferred prosecution under Family Code 53.03 by the court, prosecutor, or probation department, require the student to immediately attend the JJAEP in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;

3. In determining the condition of the deferred prosecution or court-ordered probation, consider the length of a district's expulsion order for the student; and

4. Provide timely educational services to the student in the JJAEP in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student. This provision does not require that ed-

ucational services be provided to a student who is not entitled to admission under Education Code 25.001(b).

Education Code 37.011(b)-(b-1)

A student transferred to a JJAEP must participate in the program for the full period ordered by the juvenile court, unless a district agrees to accept the student before the date ordered by the juvenile court. *Education Code 37.011(i)*

Students Who Move

If a student who is ordered to attend a JJAEP moves from one county to another, the juvenile court may request the JJAEP in the county to which the student moves to provide educational services to the student in accordance with the local MOU between the district and the juvenile board in the receiving county. *Education Code 37.011(n)*

Entry and Exit Transition Plans

For each student, the JJAEP must coordinate with the sending school district to develop a written transition plan for entrance into the JJAEP. For each student, the JJAEP must develop a written exit transition plan, provide the plan to the receiving school district, and maintain written verification that the plan was sent. The exit transition plan must include all information regarding courses in progress or completed, current grades for courses in progress, and the number of attendance days and absent days. *37 TAC 348.212(b)*

[See FOCA for requirements regarding transition to the regular classroom.]

Funding for JJAEPs

Except as determined by the commissioner of education, a student served by a JJAEP on the basis of conduct for which expulsion is required under Education Code 37.007 is not eligible for Foundation School Program funding if the JJAEP receives funding from the TJJD. *Education Code 37.011(h)*

Mandatory Expulsions

Court-Assigned Students

A district is not required to provide funding to a juvenile board for a student who is assigned by a court to a JJAEP but who has not been expelled. *Education Code 37.012*

Title 5 Felony Placements

A district shall reimburse a JJAEP in which a student is placed under Education Code 37.0081 [see FOE] for the actual cost incurred each day the student is enrolled in the program. For purposes of this subsection:

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

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

Education Code 37.0081(g)

Funding for Discretionary Expulsions

Subject to Education Code 37.011(n) [see Students Who Move, above], the district in which a student is enrolled on the date the student is expelled for conduct for which expulsion is permitted but not required under Education Code 37.007 shall, if the student is served by the JJAEP, provide funding to the juvenile board in an amount determined by the MOU under Education Code 37.011(k).

The amount of the funds transferred is determined by the portion of the school year for which the JJAEP provides educational services to a district.

Education Code 37.012(a)

Arbitration of Disputes

If a district elects to contract with the juvenile board for the placement of students who are expelled for conduct for which expulsion is permitted but not required under Education Code 37.007, and the juvenile board and the district are unable to reach an agreement in the MOU, either party may request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator.

Each party shall pay its pro rata share of the arbitration costs and shall submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the district shall select an arbitrator, and those two arbitrators shall select an arbitrator who shall decide the issues in dispute.

Decision of Arbitrator

The arbitration decision is enforceable in a court in the county in which the JJAEP is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a JJAEP must provide an amount sufficient based on operation of the JJAEP. In determining the amount to be paid by a district for an expelled student enrolled in a JJAEP, the arbitrator shall consider the relevant factors, including evidence of:

1. The actual average total per student expenditure in the district's DAEP;

2. The expected per student cost in the JJAEP as described and agreed on in the MOU and in compliance with Education Code Chapter 37; and

3. The costs necessary to achieve the accountability goals under Education Code Chapter 37.

Education Code 37.011(p)

Fees

Except as otherwise authorized by law [see FP], a JJAEP may not require a student, or the parent or guardian, to pay any fee, including an entrance or supply fee, for participating in the program. *Education Code 37.012(e)*

Location and Staffing

A JJAEP may be provided in a facility owned by a district. A district may provide personnel and services for a JJAEP under a contract with the juvenile board. *Education Code 37.011(e)*

Academic Mission of JJAEP

Academically, the mission of the JJAEP shall be to enable students to perform at grade level.

Accountability

For purposes of accountability under Education Code Chapters 39 and 39A, a student enrolled in a JJAEP is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program.

Education Code 37.011(h)

Program Requirements

JJAEP programs operated under Education Code 37.011 must comply with the requirements found at 37 Administrative Code Chapter 348. *37 TAC 348.104(b)*

Note: The following provisions apply only to districts located in counties with a population greater than 125,000 that are not exempt from the application of the provisions as detailed in Education Code 37.011(a-1), (a-2), or (a-3) [see County Population, above].

Memorandum of Understanding

A district and the county juvenile board shall, no later than September 1 of each school year, enter into a joint MOU that:

1. Outlines the responsibilities of the juvenile board concerning the establishment and operation of a JJAEP;
2. Defines the amount and conditions on payments from the district to the juvenile board for students who are served in the JJAEP whose placement was not made on the basis of expulsion required under Education Code 37.007(a) or (e);
3. Establishes that a student may be placed in the JJAEP if the student engages in serious misbehavior, as defined by Education Code 37.007(c);
4. Identifies and requires a timely placement and specifies a term of placement for expelled students for whom the district has received a notice under Family Code 52.041(d);

5. Establishes services for the transitioning of expelled students to the district before the completion of the student's placement in the JJAEP;

6. Establishes a plan that provides transportation services for students placed in the JJAEP;

7. Establishes the circumstances and conditions under which a juvenile may be allowed to remain in the JJAEP setting once the juvenile is no longer under juvenile court jurisdiction; and

8. Establishes a plan to address special education services required by law.

Education Code 37.011(k)-(m)

The memorandum of understanding must be submitted to TJJD no later than October 1 of each year. *37 TAC 348.200(c)*

Placement in JJAEP

Every expelled student who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program. *Education Code 37.010(a)*

Operating Requirements

The JJAEP shall be subject to a written operating policy developed by the local juvenile justice board and submitted to the TJJD for review and comment. The JJAEP is not subject to a requirement imposed by Education Code Title II, other than a reporting requirement or a requirement imposed by Education Code Chapters 37, 39, or 39A. *Education Code 37.011(g)*

Student Code of Conduct

The JJAEP shall adopt a Student Code of Conduct in accordance with Education Code 37.001. *Education Code 37.011(c); 37 TAC 348.224*

Educational Program

The JJAEP shall focus on English language arts, mathematics, science, social studies, and self-discipline.

Assessment

The JJAEP shall administer assessment instruments under Education Code Chapter 39, Subchapter B.

Equivalency

The JJAEP shall offer a high school equivalency program.

Review of Progress

The juvenile board or the board's designee, with the parent or guardian of each student, shall regularly review the student's academic progress. In the case of a high school student, the board or the board's designee, with the student's parent or guardian, shall review the student's progress toward meeting high school graduation requirements and shall establish a specific graduation plan for the student. The program is not required to provide a course nec-

essary to fulfill a student's high school graduation requirements other than a course specified above.

Education Code 37.011(d)

Days and Hours

The JJAEP must operate at least seven hours per day and 180 days per year, except that a JJAEP may apply to the TJJD for a waiver of the 180-day requirement. The commissioner may not grant a waiver to a JJAEP for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a district served by the program. *Education Code 37.011(f)*

Performance Reports

TJJD completes a performance assessment report as required by the General Appropriations Act. At mandatory JJAEPs (i.e., JJAEPs whose operation is required by law), the JJAEP administrator must provide a copy of the report to the juvenile board and the superintendent of each school district that participates in the JJAEP. *37 TAC 348.300*

Emergency Placements

DAEP

The principal or the principal's designee is not prohibited from ordering the immediate placement of a student in a disciplinary alternative education program (DAEP) if the principal or designee reasonably believes that the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with students in class, with the ability of students to learn, or with the operation of school or a school-sponsored activity.

Expulsion

A principal or designee may order the immediate expulsion of a student if the principal or designee reasonably believes that such action is necessary to protect persons or property from imminent harm.

Procedure

At the time of an emergency placement or an emergency expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a DAEP or expulsion may be made on a nonemergency basis. Within a reasonable time, but not later than the 10th day after the placement or expulsion, the student shall be accorded the appropriate due process required for a removal or an expulsion. [See FOA, FOC, and FOD]

Single Incident

The principal or principal's designee may order the emergency placement or expulsion of a student based on a single incident of behavior by the student.

Students with Disabilities

If the student is a student with disabilities who receives special education services, the emergency placement is subject to federal law and regulations and must be consistent with the consequences that would apply under Education Code Chapter 37, Subchapter A, to a student without a disability. [See FOF]

Immunity

A principal or designee is not liable in civil damages for an emergency placement.

Education Code 37.019

Title 5 Felony or Aggravated Robbery

A board or designee, after an opportunity for a hearing may expel a student and elect to place the student in an alternative setting as provided below if:

1. The student has been arrested for, charged with, referred to a juvenile court for, received deferred prosecution for, received probation for, received deferred adjudication for, found by a court or jury to have engaged in, or been convicted of, conduct defined as a felony offense in Penal Code, Title 5 [see FOC(LEGAL)] or the felony offense of aggravated robbery under Penal Code 29.03; and

2. The board or the board's designee determines that the student's presence in the regular classroom:

    a. Threatens the safety of other students or teachers;

    b. Will be detrimental to the educational process; or

    c. Is not in the best interests of the district's students.

A board or designee may expel the student and order the placement regardless of:

1. The date the conduct occurred;

2. The location of the conduct;

3. Whether the conduct occurred while the student was enrolled in the district; or

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

Alternative Setting

The student must be placed in:

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

2. A DAEP.

Duration of Placement

Notwithstanding Education Code Section 37.009(c) or (d) (placements beyond one year) or any other provision of Education Code Chapter 37, Subchapter C, the student is subject to the placement until:

1. The student graduates from high school;

2. The charges are dismissed or reduced to a misdemeanor offense; or

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

These provisions continue to apply if the student transfers to another district in the state.

The student is entitled to periodic review [see FOC].

Any decision of a board or designee under the above provisions is final and may not be appealed.

The above provisions apply notwithstanding any other provision of Education Code Chapter 37, Subchapter A, except that Section 37.007 (expulsion) prevails to the extent of a conflict.

Education Code 37.0081

Registered Sex Offenders

The following provisions apply to a student who is required to register as a sex offender under Code of Criminal Procedure, Chapter 62 (Chapter 62), but not to a student who is no longer required to register as a sex offender, including a student who receives an exemption from registration or a student who receives an early termination of the obligation to register.

Applicability

Removal from Regular Classroom

Notwithstanding any provision of Education Code Chapter 37, Subchapter A, on receiving notice under Code of Criminal Procedure article 15.27 or Chapter 62 that a student is required to register as a sex offender, a district shall remove the student from the regular classroom and determine the appropriate placement.

Education Code 37.302–.303

Student Under Court Supervision

A district shall place a student who is a registered sex offender and who is under any form of court supervision, including probation, community supervision, or parole, in the appropriate alternative education program for at least one semester.

If a student transfers to another district during the placement, the district to which the student transfers may:

1. Require the student to complete an additional semester in the appropriate alternative education program without conducting a review of the student's placement for that semester; or
2. Count any time spent by the student in an alternative education program in the district from which the student transfers toward the mandatory placement requirement.

Education Code 37.304

Student Not Under Court Supervision

A district may place a student who is a registered sex offender and who is not under any form of court supervision in the appropriate alternative education program for one semester or in the regular classroom. A district may not place the student in the regular classroom if the board or designee determines that the student's presence in the regular classroom:

1. Threatens the safety of other students or teachers;
2. Will be detrimental to the educational process; or

3. Is not in the best interests of the district's students.

Education Code 37.305

Appropriate Program

Except as provided below, a district shall place a student who is required by the board or designee to attend an alternative education program in a DAEP. *Education Code 37.309*

Exception

A district shall place the student in a JJAEP if:

1. The memorandum of understanding between the district and juvenile board provides for the placement of students who are registered sex offenders in JJAEP; or

2. A court orders the placement of the student in a JJAEP.

A JJAEP is entitled to funding for the student in the same manner as for students who are subject to discretionary expulsion.

Education Code 37.309–.310

Review

At the end of the first semester of a student's placement, a board or designee shall convene a committee to review the placement.

Review Committee

The committee must be composed of:

1. A classroom teacher from the campus to which the student would be assigned were the student not placed in an alternative education program;

2. The student's parole or probation officer or, in the case of a student who does not have a parole or probation officer, a representative of the local juvenile probation department;

3. An instructor from the alternative education program to which the student is assigned;

4. A district designee selected by the board or designee; and

5. A school counselor employed by the district.

Recommendation

The committee by majority vote shall determine and recommend to the board or designee whether the student should be returned to the regular classroom or remain in the alternative education program.

If the committee recommends that the student be returned to the regular classroom, a board or designee shall return the student to the regular classroom unless the board or designee determines that the student's presence in the regular classroom:

1. Threatens the safety of other students or teachers;

2. Will be detrimental to the educational process; or

3. Is not in the best interests of the district's students.

If the committee recommends that the student remain in the alternative education program, a board or designee shall continue the student's placement in the alternative education program unless the board or designee determines that the student's presence in the regular classroom:

1. Does not threaten the safety of other students or teachers;

2. Will not be detrimental to the educational process; and

3. Is not contrary to the best interests of the district's students.

If a board or designee determines that the student should remain in an alternative education program, the board or designee shall reconvene the committee before the beginning of each school year to review the student's placement in an alternative education program.

Education Code 37.306

Appeal

A student or the student's parent or guardian may appeal a decision by a board or designee to place the student in an alternative education program by requesting a conference among the board or designee, the student's parent or guardian, and the student. The conference is limited to the factual question of whether the student is required to register as a sex offender under Chapter 62.

If a board or designee determines at the conclusion of the conference that the student is required to register as a sex offender, the student is subject to placement in an alternative education program.

The decision of a board or designee is final and may not be appealed.

Education Code 37.311

Liability

The above provisions regarding placement of a student who is a registered sex offender do not:

1. Waive any liability or immunity of a governmental entity or its officers or employees; or

2. Create any liability for or a cause of action against a governmental entity or its officers or employees.

Education Code 37.312

Special Education Student	The placement of a student with a disability who receives special education services must be made in compliance with the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.). The review of the student's placement may be made only by a duly constituted ARD committee [see EHBAB]. The ARD committee may request that a board or designee convene a review committee to assist in conducting the review. *Education Code 37.307*
Transfer Students	Except where a student under court supervision transfers during a mandatory placement, a district shall determine whether to place a transfer student who is a registered sex offender in the appropriate alternative education program or in a regular classroom. A district shall follow the procedures at Review, above, in making the determination. *Education Code 37.308*

Students with Disabilities Under Section 504

A district shall conduct an evaluation in accordance with 34 C.F.R. 104.35(b) before taking any action with respect to any significant change in placement of a student with a disability who needs or is believed to need special education and related services. *34 C.F.R. 104.35(a)*

A district may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent that the district would take disciplinary action against nondisabled students. The due process procedures afforded under Section 504 do not apply to such disciplinary action. *29 U.S.C. 705(20)(C)(iv)*

Note: The provisions below apply only to students eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA).

Students Receiving Special Education Services

ARD Committee Required

Except as set forth below, the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal (ARD) committee. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations. *Education Code 37.004(a)-(b)*

The methods adopted in the Student Code of Conduct [see FO] for discipline management and for preventing and intervening in student discipline problems must provide that a student who is enrolled in the special education program may not be disciplined in a manner that results in a change in the student's educational placement for bullying, harassment, or making hit lists until an ARD committee meeting has been held to review the conduct. *Education Code 37.001(b-1)*

DAEP Placement Not Solely for Educational Purposes

A student with a disability who receives special education services may not be placed in a disciplinary alternative education program (DAEP) solely for educational purposes. A teacher in a DAEP who has a special education assignment must hold an appropriate certificate or permit for that assignment. *Education Code 37.004(c)-(d)*

Removal for 10 Days or Less

School personnel may remove a student with a disability who violates a student code of conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, to the extent those alternatives are applied to children without disabilities. *20 U.S.C. 1415(k)(1)(B); 34 C.F.R. 300.530(b)(1)*

Services During Removal	A district is required to provide services during the period of removal if the district provides services to a child without disabilities who is similarly removed. *34 C.F.R. 300.530(d)*
Subsequent Removals of 10 Days or Less	School personnel may remove the student for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement (see below). *34 C.F.R. 300.530(b)(1)*
Services During Removal	After a student has been removed from his or her current placement for 10 school days in the same school year, during any subsequent removal of 10 consecutive school days or less, school personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's individualized education program (IEP). *20 U.S.C. 1415(k)(1)(D); 34 C.F.R. 300.530(d)(4)*
Notice of Procedural Safeguards	Not later than the date on which the decision to take the disciplinary action is made, a district shall notify the student's parents of the decision and of all procedural safeguards [see EHBAE]. *20 U.S.C. 1415(k)(1)(H)*
Removals That Are a Change in Placement	Any disciplinary action that would constitute a change in placement may be taken only after the student's ARD committee conducts a manifestation determination review. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of functional behavioral assessments; positive behavioral interventions, strategies, and supports; behavioral intervention plans; and the manifestation determination review [see Manifestation Determination, below]. *Education Code 37.004(b)*
Behavior Assessment and Intervention	If a district takes a disciplinary action regarding a student with a disability who receives special education services that constitutes a change in placement under federal law, the district shall: 1. Not later than the 10th school day after the change in placement: a. Seek consent from the student's parent or person standing in parental relation to the student to conduct a functional behavioral assessment of the student, if a functional behavioral assessment has never been conducted

on the student or the student's most recent functional behavioral assessment is more than one year old; and

b. Review any previously conducted functional behavioral assessment of the student and any behavior improvement plan or behavioral intervention plan developed for the student based on that assessment; and

2. As necessary, develop a behavior improvement plan or behavioral intervention plan for the student if the student does not have a plan or, if the student has a behavior improvement plan or behavioral intervention plan, revise the student's plan.

Education Code 37.004(b-1)

Change in Placement

For purposes of disciplinary removal of a student with a disability, a change in placement occurs if a student is:

1. Removed from the student's current educational placement for more than 10 consecutive school days; or

2. Subjected to a series of removals that constitute a pattern because:

a. The series of removals total more than 10 school days in a school year;

b. The student's behavior is substantially similar to the student's behavior in the previous incidents that resulted in the series of removals; and

c. Additional factors exist, such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

The district determines, on a case-by-case basis, whether a pattern of removals constitutes a change in placement. The district's determination is subject to review through due process and judicial proceedings.

34 C.F.R. 300.536

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student who violates a code of student conduct. *20 U.S.C. 1415(k)(1)(A)*

Manifestation Determination

Within 10 school days of any decision to change the placement of a student because of a violation of a code of student conduct, a district, parents, and relevant members of the ARD committee (as determined by the parent and the district) shall review all relevant information in the student's file, including the student's IEP, any

teacher observations, and any relevant information provided by the parents to determine whether the conduct in question was:

1. Caused by, or had a direct and substantial relationship to, the student's disability; or

2. The direct result of the district's failure to implement the IEP.

If the district, the parent, and relevant members of the ARD committee determine that either of the above is applicable, the conduct shall be determined to be a manifestation of the student's disability.

If the district, the parent, and relevant members of the ARD committee determine the conduct was the direct result of the district's failure to implement the IEP, the district must take immediate steps to remedy those deficiencies.

20 U.S.C. 1415(k)(1)(E); 34 C.F.R. 300.530(e)

Not a Manifestation

If the determination is that the student's behavior was not a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as for students without disabilities. The ARD committee shall determine the interim alternative educational setting. *20 U.S.C. 1415(k)(1)(C), (k)(2); 34 C.F.R. 300.530(c)*

Expulsion

In a county with a juvenile justice alternative education program (JJAEP) [see FODA], a district must invite the administrator of the JJAEP or the administrator's designee to an ARD committee meeting convened to discuss the discretionary expulsion under Education Code 37.007 of a student with a disability. The district must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. A copy of the student's current IEP must be provided to the JJAEP representative with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP. *19 TAC 89.1052*

Services During Removal

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.

2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting.

34 C.F.R. 300.530(d)(1)-(2)

For a student with a disability who was expelled under a discretionary expulsion under Education Code 37.007, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP if the JJAEP provides written notice to the district of specific concerns that the student's education or behavioral needs cannot be met in JJAEP.

The district must invite the JJAEP administrator or the administrator's designee to the meeting and must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP may participate in the meeting to the extent that the meeting relates to the student's continued placement in JJAEP.

19 TAC 89.1052

Manifestation

If the district, the parents, and relevant members of the ARD committee determine that the conduct was a manifestation of the student's disability, the ARD committee shall:

1. Conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan (BIP) for the student; or

2. If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

Except as provided at Special Circumstances, below, the ARD committee shall return the student to the placement from which the student was removed, unless the parent and the district agree to a change in placement as part of the modification of the BIP.

20 U.S.C. 1415(k)(1)(F); 34 C.F.R. 300.530(f)

Special Circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the Texas Education Agency (TEA) or a school district;
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of TEA or a school district; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of TEA or the district.

20 U.S.C. 1415(k)(1)(G); 34 C.F.R. 300.530(g)

The ARD committee shall determine the interim alternative education setting. *20 U.S.C. 1415(k)(2)*

Services During Removal

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting.

34 C.F.R. 300.530(d)(1)

Appeals

A parent who disagrees with a placement decision or the manifestation determination may request a hearing. A district that believes that maintaining a current placement of a student is substantially likely to result in injury to the student or others may request a hearing. *20 U.S.C. 1415(k)(3)(A); 34 C.F.R. 300.532(a); 19 TAC 89.1151* [See EHBAE]

Placement During Appeals

When an appeal has been requested by a parent or a district, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the student's assignment to the alternative setting, whichever oc-

curs first, unless the parent and district agree otherwise. *20 U.S.C. 1415(k)(4); 34 C.F.R. 300.533*

Reporting Crimes

Federal law does not prohibit a district from reporting a crime committed by a student with a disability to appropriate authorities. If a district reports a crime, the district shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the district reported the crime. A district may transmit records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA). *20 U.S.C. 1415(k)(6); 34 C.F.R. 300.535* [See FL]

Students Not Yet Identified

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in the IDEA if a district had knowledge that the student had a disability before the behavior that precipitated that disciplinary action occurred. *20 U.S.C. 1415(k)(5)(A); 34 C.F.R. 300.534(a)*

District Knowledge

A district shall be deemed to have knowledge that a student has a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the student expressed concern in writing to supervisory or administrative personnel of the district, or to the teacher of the student, that the student was in need of special education and related services;
2. The parent requested an evaluation of the student for special education and related services; or
3. The student's teacher, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the special education director or to other supervisory personnel of the district.

20 U.S.C. 1415(k)(5)(B); 34 C.F.R. 300.534(b)

Exception

A district shall not be deemed to have knowledge that the student had a disability if:

1. The parent has not allowed an evaluation of the student;
2. The parent has refused services; or
3. The student has been evaluated and it was determined that the student did not have a disability.

20 U.S.C. 1415(k)(5)(C); 34 C.F.R. 300.534(c)

If a district does not have knowledge (as described above), before taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

20 U.S.C. 1415(k)(5)(D); 34 C.F.R. 300.534(d)

Behavior Management Techniques

It is the policy of the state to treat all students with dignity and respect, including students with disabilities who receive special education services. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities. *Education Code 37.0021(a); 19 TAC 89.1053(j)*

[For restrictions on aversive techniques, see FO.]

Rules on Restraint and Seclusion

The commissioner by rule shall adopt procedures for the use of restraint and time-out by a district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services. The procedures must be consistent with Education Code 37.0021(d). *Education Code 37.0021(d)*

School Peace Officers

This provision and any rules or procedures adopted under this provision apply to a peace officer only if the peace officer:

1. Is employed or commissioned by a district; or
2. Provides, as a school resource officer, a regular police presence on a district campus under a memorandum of understanding between the district and a local law enforcement agency.

Education Code 37.0021(h); 19 TAC 89.1053(m)

Exceptions

Education Code 37.0021 (use of confinement, seclusion, restraint, and time-out) does not apply to:

1. A peace officer, while performing law enforcement duties, except as provided above [see School Peace Officers] and by

Education Code 37.0021(i) [see Restraint, Documentation, below];

2. Juvenile probation, detention, or corrections personnel; or

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

Law Enforcement Duties

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

Education Code 37.0021(b)(4), (g); 19 TAC 89.1053(m), (n)

Further, Education Code 37.0021 does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

1. The student possesses a weapon; and

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

For these purposes, "weapon" includes any weapon described under Education Code 37.007(a)(1). [See FNCG]

Education Code 37.0021(f)

Peace Officer or Security Personnel Use of Restraint or Taser

A peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity must not restrain or use a chemical irritant spray or Taser on a student enrolled in fifth grade or below, unless the student poses a serious risk of harm to the student or another person [see FO defining Taser]. *19 TAC 89.1053(l)*

Confinement

A student with a disability who receives special education services may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique. *Education Code 37.0021(a)*

Seclusion

A district employee or volunteer or an independent contractor of a district may not place a student in seclusion. *Education Code 37.0021(c)*

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

1. Is designed solely to seclude a person; and

2. Contains less than 50 square feet of space.

Education Code 37.0021(b)(2)

Restraint

"Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body. *19 TAC 89.1053(b)(2)*

The following provisions do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced above does not include:

1. Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;

2. Limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;

3. Limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the IEP as required by 34 C.F.R. 300.324(a)(2)(i) to promote student learning and reduce and/or prevent the need for ongoing intervention; or

4. Seat belts and other safety equipment used to secure students during transportation.

19 TAC 89.1053(f)

Limitations on Use of Restraint

A school employee, volunteer, or independent contractor may use restraint only in an emergency and with the following limitations:

1. Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.

2. Restraint shall be discontinued at the point at which the emergency no longer exists.

3. Restraint shall be implemented in such a way as to protect the health and safety of the student and others.

4. Restraint shall not deprive the student of basic human necessities.

19 TAC 89.1053(c)

Emergency

"Emergency" means a situation in which a student's behavior poses a threat of:

1. Imminent, serious physical harm to the student or others; or
2. Imminent, serious property destruction.

19 TAC 89.1053(b)(1)

Training

Training for school employees, volunteers, or independent contractors regarding the use of restraint shall be provided according to the requirements set forth at 19 Administrative Code 89.1053(d).

Documentation

In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the documentation and notification requirements set forth at 19 Administrative Code 89.1053(e).

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

Education Code 37.0021(i)

Time-Out

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

1. That is not locked; and
2. From which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

19 TAC 89.1053(b)(3)

Limitations on Use of Time-Out

A school employee, volunteer, or independent contractor may use time-out with the following limitations:

1. Physical force or threat of physical force shall not be used to place a student in time-out.
2. Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or behavior improvement plan or behavioral intervention plan if it is utilized

on a recurrent basis to increase or decrease targeted behavior.

3. Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

19 TAC 89.1053(g)

Training Training for school employees, volunteers, or independent contractors regarding the use of time-out shall be provided according to the requirements set forth at 19 Administrative Code 89.1053(h).

Documentation Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the district must document each use of time-out prompted by a behavior of the student specified in the student's behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

19 TAC 89.1053(i)

Authorized Fees

A board may require payment of:

1. A fee for materials used in any program in which the resultant product in excess of minimum requirements becomes, at the student's option, the personal property of the student, if the fee does not exceed the cost of materials.
2. Membership dues in student organizations or clubs and admission fees or charges for attending extracurricular activities, if membership or attendance is voluntary.
3. A security deposit for the return of materials, supplies, or equipment.
4. A fee for personal physical education and athletic equipment and apparel, although any student may provide his or her own equipment or apparel if it meets reasonable requirements and standards relating to health and safety established by the board.
5. A fee for items of personal use or products that a student may purchase at the student's option, such as student publications, class rings, annuals, and graduation announcements.
6. A fee specifically permitted by any other statute.
7. A fee for an authorized, voluntary student health and accident benefit plan.
8. A reasonable fee, not to exceed the actual annual maintenance cost, for the use of musical instruments and uniforms owned or rented by a district.
9. A fee for items of personal apparel that become the property of the student and that are used in extracurricular activities.
10. A parking fee [see CLC] or a fee for identification cards.
11. A fee for a driver training course, not to exceed the actual district cost per student in the programs for the current school year.
12. A fee for a course offered for credit that requires the use of facilities not available on the school premises or the employment of an educator who is not part of the school's regular staff, if participation in the course is at the student's option. The board may not charge a fee for a course requested by parents according to Education Code 28.003 [see EHA].
13. A fee for a course offered during summer school, except that the board may charge a fee for a course required for gradua-

tion only if the course is also offered without a fee during the regular school term.

14. A reasonable fee for transportation of a student who lives within two miles of the school the student attends to and from that school, except that the board may not charge a fee for transportation for which the district receives funds under Education Code 48.151(d).

15. A reasonable fee, not to exceed $50, for costs associated with an educational program offered outside of regular school hours through which a student who was absent from class receives instruction voluntarily for the purpose of making up the missed instruction and meeting the level of attendance required under Education Code 25.092. [See FEC] The district must provide a written form to be signed by the student's legal guardian stating that this fee would not create a financial hardship or discourage the student from attending the program. The district may only assess the fee if the student returns the signed form.

16. If the district does not receive any funds under Education Code 48.151 and does not participate in a county transportation system for which an allotment is provided under Education Code 48.151(i), a reasonable fee for the transportation of a student to and from the school the student attends.

Education Code 11.158(a), (d), (h)

As a public entity, a school district may charge a fee or tuition only if it is specifically authorized to do so, either by statute or under the constitution. *Atty. Gen. Op. JC-0207 (2000)*

Hybrid or Virtual Course

A district may charge a fee for a hybrid or virtual course provided to a student who is not eligible to enroll in a public school in this state or is not enrolled in the district. *Education Code 30B.055* [See EHDE]

Prohibited Fees

A board may not charge fees for:

1. Instructional materials, workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course, except as authorized under the Education Code.

2. Field trips required as part of a basic educational program or course.

3. Any specific form of dress necessary for any required educational program or diplomas.

4. Instructional costs for necessary school personnel employed in any course or educational program required for graduation.
5. Library materials required to be used for any educational course or program, other than fines assessed for lost, damaged, or overdue materials.
6. Admission to any activity the student is required to attend as a prerequisite to graduation.
7. Admission to or examination in any required educational course or program.
8. Lockers.

Personal Supplies

Students may be required to furnish personal or consumable items, including pencils, paper, pens, erasers, notebooks, and school uniforms, except that students who are educationally disadvantaged may be required to furnish school uniforms only as provided by Education Code 11.162. [See FNCA]

School Store

A district may operate a school store where students may purchase school supplies and materials.

Waiver of Fees

A district shall adopt reasonable procedures for waiving a deposit or fee if a student or the student's parent or guardian is unable to pay it. This policy shall be posted in a central location in each school facility, in the school policy manual, and in the student handbook.

Postsecondary Instructional Programs

A board may charge reasonable fees for goods and services provided in connection with any postsecondary instructional program, including career and technology, adult, veterans, or continuing education, community service, evening school, and high school equivalency programs.

Education Code 11.158(b)-(c), (e)-(g)

Table of Contents

Public Information 3
Availability of Public Information 3
Special Rights of Access 3
Information That Must Be Disclosed 3
Contracting Information 5
Investment Information 5
Personal Services Contract 5
Confidential Information That Must Not Be Disclosed 5
Confidential by Law 5
Privileged Attorney-Client Information 5
Closed Meeting Records 6
Student Education Records 6
Juvenile Law Enforcement Records 7
Certain Personnel Information 7
Credit Card, Debit Card, Charge Card, and Access Device Numbers 9
Email Addresses of the Public 9
Individuals Who Inform of Legal Violations 10
Crime Victim Information 11
Location or Layout of Shelter Centers 12
Restriction on Release of Licensee Information 12
Criminal History Records 12
Sensitive Crime Scene Image 13
Computer Security 13
Military Discharge Records 15
Firefighter or EMS Work Schedules 15
Out-of-State Health-Care Provider Information 16
Applicant for Disaster Recovery Funds 16
Threat of Physical Harm 16
Exceptions to Disclosure 16
Voluntary Disclosure 16
Right of Access After 75 Years 16
Information Relating to Litigation 17
Information Related to Competition or Bidding 17

Certain Information on Real or Personal Property 17
Drafts Involving Legislation 17
Certain Legal Information 18
Certain Law Enforcement Information 18
Private Correspondence of Elected Official 19
Trade Secrets 19
Certain Commercial and Financial Information 19
Proprietary Information 19
Proprietary Records and Trade Secrets in Certain Partnerships 20
Certain Memoranda 20
Audit Working Paper 20
Personal Information of Certain Individuals 20
Photograph of Peace Officer 22
Testing Items 22
Certain Library Records 22
Superintendent Applicants 23
Certain Motor Vehicle and Personal Identification Information 23
Economic Development Negotiations 23
Social Security Numbers of Any Living Person 24
Exclusions from Public Information 24
Protected Health Information 24
Subpoena or Discovery Request 24
No Right of Access 25
Commercially Available Publications 25
Requests from Incarcerated Individuals 25
Retirement Eligibility Records 25

Note: For forms prescribed by the attorney general, see the Attorney General's Public Information website.[1]

Public Information

See GB(LEGAL) for the definition of public information.

Availability of Public Information

Public information is available to the public at a minimum during the normal business hours of a district. Government Code Chapter 552 (Public Information Act [PIA]) does not authorize the withholding of public information or limit the availability of public information to the public, except as expressly provided by the PIA. *Gov't Code 552.006, .021*

Special Rights of Access

Person Whose Information the District Holds

A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by the district that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. A district may not deny this access on the grounds that the information is considered confidential by privacy principles under the Public Information Act but may assert as grounds for denial other provisions of the PIA or other law not intended to protect the person's privacy interests. Access to information under this provision shall be provided in the manner prescribed by Government Code 552.229 (consent to release) and 552.307 (timely release), below. *Gov't Code 552.023(a), (b), (e)*

Board Members

For information on board members' special access rights to district information, see BBE.

Parents

A district that receives a request from a parent for public information relating to the parent's child shall comply with the Public Information Act. *Education Code 26.0085(e)*

For information on parents' special access rights to their child's education records, see FL.

Information That Must Be Disclosed

The following categories of information are public information and not excepted from required disclosure unless made confidential under the Public Information Act or other law:

1. A completed report, audit, evaluation, or investigation made of, for, or by a board or district, except as provided in Government Code 552.108.
2. The name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a district.
3. Information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a board.

4. The name of each official and the final record of voting on all proceedings of a board.

5. All working papers, research material, and information used to estimate the need or expenditure of public funds or taxes by a board, on completion of the estimate.

6. A description of a district's central and campus organization, including where, from whom, and how the public may obtain information, submit information or requests, and obtain decisions.

7. A statement of the general course and method by which a district's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.

8. A rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations.

9. A substantive rule of general applicability adopted or issued by a board as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by the board.

10. Each amendment, revision, or repeal of the information described in items 6-9.

11. Final opinions and orders issued in the adjudication of cases.

12. A policy statement or interpretation adopted or issued by a board.

13. Administrative manuals and instructions to staff that affect a member of the public.

14. Information regarded as open to the public under a district's policies.

15. Information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege.

16. Information that is also contained in a public court record.

17. A settlement agreement to which a board is a party.

Gov't Code 552.022

Contracting Information

Contracting information, as that term is defined in Government Code 552.003(1-a) [see GBAA], is public and must be released unless excepted from disclosure under the Public Information Act. The exceptions to disclosure provided by Government Code 552.110 (trade secrets) and 552.1101 (proprietary information) do not apply to the types of contracting information listed at Government Code 552.0222(b). *Gov't Code 552.0222(a), (b)* [See GBAA for additional procedures related to contracting information.]

Investment Information

Certain categories of information held by a district relating to its investments, as specified by Government Code 552.0225(b), are public information and not excepted from disclosure under the Public Information Act. *Gov't Code 552.0225*

Personal Services Contract

A contract describing an administrator's services to be performed for another entity that is provided to the board of the administrator's employing district for approval under Education Code 11.006 is subject to disclosure under the Public Information Act. *Education Code 11.006(d)* [See DBD]

Confidential Information That Must Not Be Disclosed

A person commits an offense if the person distributes information considered confidential under the terms of the Public Information Act. A violation under this provision also constitutes official misconduct. *Gov't Code 552.352*

Confidential by Law

Information is excepted from public disclosure if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *Gov't Code 552.101*

Note: For confidentiality and access provisions addressed by specific statutes other than Government Code Chapter 552 (Public Information Act), see the applicable policy code.

Privileged Attorney-Client Information

The Texas Rules of Civil Procedure and the Texas Rule of Evidence are "other law" within the meaning of Government Code 552.022 (allowing "other law" to make information confidential from required disclosure). A district does not forfeit the attorney-client privilege by failing to timely request an attorney general's decision, and the privilege is sufficiently compelling to rebut the presumption of public disclosure after an untimely request. *In re City of Georgetown, 53 S.W.3d 328, 336 (Tex. 2001); Paxton v. City of Dallas, 509 S.W.3d 247 (Tex. 2017)*

The attorney-client privilege does not apply if the attorney or attorney's representative acts in a capacity other than that of providing or facilitating professional legal services to the client. *Harlandale*

Indep. Sch. Dist. V. Cornyn, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. Denied)

Closed Meeting Records

The certified agenda or tape recording of a closed meeting is available for public inspection only under a court order issued in litigation in a district court involving an alleged violation of the Open Meetings Act. *Gov't Code 551.104(c); Atty. Gen. ORD 684 (2009)*

[For information regarding minutes or recording of an open meeting, see BE.]

Student Education Records

The Public Information Act does not require the release of information contained in education records of the district, except in conformity with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g (FERPA).

In this provision, "student record" means information that constitutes education records as that term is defined by FERPA or information in a record of an applicant for admission to an educational institution, including a transfer applicant.

Information is confidential and excepted from required disclosure if it is information in a student record at a district.

The district is not prohibited from disclosing or providing information included in an education record if the disclosure or provision is authorized by FERPA or other federal law. In addition, a student record shall be made available on the request of district personnel, the student, the student's parents, legal guardian, or spouse, or a person conducting a child abuse investigation required by Family Code Chapter 261, Subchapter D.

Except as provided by Government Code 552.114(e) (information in enrollment or transfer records, below), a district may redact information in a student record from information required to be disclosed under the Public Information Act without requesting a decision from the attorney general.

Gov't Code 552.026, .114 [See FL]

Enrollment or Transfer Information

If an applicant, or a parent or legal guardian of a minor applicant, for admission to an educational institution funded wholly or partly by state revenue requests information in the record of the applicant, the district shall disclose any information that is related to the application for admission and was provided to the district by the applicant. *Gov't Code 552.114(e)*

Student Victim Information

The name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Penal Code 21.12(a) may not be re-

leased to the public and is not public information subject to disclosure. *Penal Code 21.12(d)*

The name of a student or minor who is the victim of abuse or unlawful conduct by an educator is not public information subject to disclosure. *Education Code 22A.053(j)*

Juvenile Law Enforcement Records

Except as provided by Family Code 58.008(c) (person with a determinate sentence), law enforcement records concerning a child, as defined by Family Code 51.02(2), and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public. *Family Code 58.008(b)*

Law enforcement records concerning a child may be inspected or copied by:

1. A juvenile justice agency, as defined by Family Code 58.101;
2. A criminal justice agency, as defined by Government Code 411.082;
3. The child;
4. The child's parent or guardian; or
5. The chief executive officer or the officer's designee of a primary or secondary school where the child is enrolled only for the purpose of conducting a threat assessment or preparing a safety plan related to the child. [See FFB]

Family Code 58.008(d), (d-1)

Exclusions

These provisions do not apply to a record relating to a child that is required or authorized to be maintained under the laws regulating the operation of motor vehicles in Texas or subject to disclosure under Code of Criminal Procedure Chapter 62 (registered sex offenders). *Family Code 58.008(a)*

Certain Personnel Information

Note: For previous determinations by the attorney general allowing governmental bodies to withhold specific categories of information in personnel records, including direct deposit forms; employment forms I-9, W-2, W-4; and fingerprints, without the necessity of requesting an attorney general decision, see Attorney General Open Records Decision (ORD) 684 (2009).

Employee Social Security Numbers

The social security number of an employee of a district in the custody of the district is confidential. *Gov't Code 552.147(a-1)*

Invasion of Privacy	Information is excepted from public disclosure if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of a district employee is to be made available to that employee or the employee's designated representative as public information is made available under the Public Information Act. The exception to public disclosure created by this provision is in addition to any exception created by Government Code 552.024. Public access to personnel information covered by Government Code 552.024 is denied to the extent provided by that provision. *Gov't Code 552.102(a)*
Employee Birth Dates	Disclosure of employee birth dates would constitute a clearly unwarranted invasion of personal privacy, and thus such dates are excepted from disclosure under Government Code 552.102(a). *Texas Comptroller of Public Accts. v. Atty. Gen'l of Texas, 354 S.W.3d 336 (Tex. 2010)*
College Transcripts	Information is excepted from public disclosure if it is a transcript from an institution of higher education maintained in the personnel file of a professional employee, except that this provision does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee. Gov't Code 552.102(b)
Evaluations	A document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under the Public Information Act. At the request of a school district, open-enrollment charter school, or private school at which a teacher or administrator has applied for employment, a district shall give the requesting district or school a document evaluating the performance of a teacher or administrator employed by the school. A district shall give the Texas Education Agency (TEA) a document evaluating the performance of a teacher or administrator employed by the district for purposes of an investigation conducted by TEA. *Education Code 21.355(a), (c), (d)*
Educator Certification Exam	The results of an educator certification examination are confidential and are not subject to disclosure, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Education Code 21.057. *Education Code 21.048(c-1)*

Employee Accused of Improper Relationship with Student

A primary or secondary school may not release externally to the general public the name of an employee who is accused of committing an offense under Penal Code 21.12 (improper relationship between educator and student) until the employee is indicted for the offense. The school may release the name of the accused employee regardless of whether the employee has been indicted for the offense as necessary for the school to:

1. Report the accusation:
    a. To TEA, another state agency, or local law enforcement or as otherwise required by law; or
    b. To the school's community in accordance with the school's policies or procedures; or
2. Conduct an investigation of the accusation.

Penal Code 21.12(d-1)

Credit Card, Debit Card, Charge Card, and Access Device Numbers

A credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a district is confidential.

"Access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another device may be used to:

1. Obtain money, goods, services, or another thing of value; or
2. Initiate a transfer of funds other than a transfer originated solely by paper instrument.

A district may redact credit card, debit card, charge card, or access device numbers from any information the district discloses without the necessity of requesting a decision from the attorney general. The district shall provide the information required by Government Code 552.136(e) to the requestor on a form prescribed by the attorney general. The requestor is entitled to seek a decision from the attorney general about the matter.

Gov't Code 552.136

Email Addresses of the Public

An email address of a member of the public that is provided for the purpose of communicating electronically with a district is confidential and not subject to disclosure unless the member of the public affirmatively consents to its release.

This confidentiality does not apply to an email address:

1. Provided to a district by a person who has a contractual relationship with the district or by the contractor's agent;

2. Provided to a district by a vendor who seeks to contract with the district or by the vendor's agent;

3. Contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a district in the course of negotiating the terms of a contract or potential contract;

4. Provided to a district on a letterhead, coversheet, printed document, or other document made available to the public; or

5. Provided to a district for the purpose of receiving orders or decisions from the district, or for the purpose of providing public comment on or receiving notices related to an application for a license. A "license" under this provision includes a state agency permit, certificate, approval, registration, or similar form of permission required by law.

A district may also disclose an email address for any reason to another governmental body or to a federal agency.

Gov't Code 552.137, 2001.003(2); Atty. Gen. ORD 684 (2009)

Individuals Who Inform of Legal Violations

An informer's name or information that would substantially reveal the identity of an informer is excepted from public disclosure.

"Informer" means a student or former student or an employee or former employee of a district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the district or the proper regulatory enforcement authority.

This exception does not apply if the informer:

1. If the informer is a student or former student, and the student, student's legal guardian, or student's spouse consents to disclosure of the student's name;

2. If the informer is an employee or former employee who consents to disclosure of the employee's name; or

3. The informer planned, initiated, or participated in the possible violation.

Information may be made available to a law enforcement agency or prosecutor for official purposes upon proper request, made in compliance with applicable law and procedure. However, this exception does not impair the confidentiality of information consid-

ered to be confidential by law, including information excepted from disclosure under the Public Information Act.

Gov't Code 552.135

Crime Victim Information

Address Confidentiality Program

Information relating to a participant in the Address Confidentiality Program for Certain Crime Victims (including from family violence, sexual assault or abuse, stalking, child abduction, or trafficking of persons under Code of Criminal Procedure Chapter 58, Subchapter B) is confidential, except as provided by Code of Criminal Procedure 58.061, and may not be disclosed under the Public Information Act. *Code of Criminal Procedure 58.060*

Employee Victims

A district employee who is a victim under Code of Criminal Procedure Chapter 56B (Crime Victims' Compensation Act) or has suffered property damage for which the employee is eligible for compensation under Chapter 56C, regardless of whether the employee has filed an application for compensation may elect whether to allow public access to information held by the district that would identify or tend to identify the employee, including a photograph or other visual representation of the employee. The election must be made in writing on a form developed by the district, signed by the employee, and filed with the district before the third anniversary of the latest to occur of one of the following:

1. The date the crime was committed or the property damage occurred, as applicable;
2. The date employment begins; or
3. The date the district develops the form and provides it to employees.

If the employee fails to make an election, the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

Gov't Code 552.132(d)

Victims of Certain Crimes

Information is confidential and excepted from public disclosure if the information identifies an individual as a victim of:

1. A criminal offense specified by Government Code 552.1315(a)(1)(A) and (B), or
2. Any criminal offense if the victim was younger than 18 years of age when any element of the offense was committed.

Notwithstanding the above, information may be disclosed:

1. To any victim identified by the information;
2. To the parent or guardian of a victim described by item 2 above who is identified by the information;
3. To a law enforcement agency for investigative purposes; or
4. In accordance with a court order requiring the disclosure.

Gov't Code 552.1315

Location or Layout of Shelter Centers

Information that relates to the location or physical layout of a family violence shelter center or victims of trafficking shelter center is confidential. A district may redact this information from any information the district discloses without the necessity of requesting a decision from the attorney general. If a district redacts information under this provision, the district shall provide the information required by Government Code 552.138(e) to the requestor on a form prescribed by the attorney general. The requestor is entitled to seek a decision from the attorney general about the matter.

Restriction on Release of Licensee Information

A district may not sell or otherwise release certain information listed about a person who holds, previously held, or is an applicant for a license issued by the district if the person meets the requirements under Government Code 552.138.

Gov't Code 552.138(b-1), (c), (d), (f)

Criminal History Records

Information collected to comply with Education Code Chapter 22, Subchapter C (criminal records), including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, is confidential and may not be released except to comply with Subchapter C, by court order, or with the consent of the person who is the subject of the information. *Education Code 22.08391*

A district may not release or disclose to any person criminal history record information (CHRI) obtained from the Federal Bureau of Investigation.

CHRI obtained by the district or obtained by an entity that contracts to provide services to a district from the Texas Department of Public Safety or any other Texas criminal justice agency may not be released to any person in the original form or any subsequent form except:

1. The individual who is the subject of the information;
2. TEA;
3. The State Board for Educator Certification;

4. The chief personnel officer of the transportation company if the information was obtained under Government Code 411.097(a)(2) with respect to a transportation company that contracts with the district to provide student transportation; or

5. By court order.

Gov't Code 411.097(d) [See CJA, DBAA, and DHB]

Sensitive Crime Scene Image

A sensitive crime scene image in the custody of a district is confidential and excepted from public disclosure, regardless of the date that the image was taken or recorded. A district may not permit a person to view or copy the image unless the person is one of the individuals specified by Government Code 552.1085(d) and the district is not otherwise asserting an exception to disclosure under another provision of the Public Information Act or another law. *Gov't Code 552.1085*

Computer Security

Computer Networks

Information is excepted from public disclosure if it is information that relates to computer network security, to network security information that is restricted under Government Code 2059.055, or to the design, operation, or defense of a computer network.

The following information is confidential:

1. A computer network vulnerability report;

2. Any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a district or of a contractor of a district is vulnerable to unauthorized access or harm, including an assessment of the extent to which a district's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use;

3. A photocopy or other copy of an identification badge issued to an official or employee of a district; and

4. Information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log. This does not affect the notification requirements related to a breach of system security as defined by Business and Commerce Code 521.053. [See CQB]

A district may disclose the information to a bidder if the district determines that providing the information is necessary for the bidder to provide an accurate bid. Such a disclosure is not a

voluntary disclosure for purposes of Government Code 552.007 [see Voluntary Disclosure, below].

Gov't Code 552.139

Cybersecurity Information

A cyber threat indicator or defensive measure shared with the federal government under Title 6, United States Code, shall be:

1. Exempt from disclosure under federal freedom of information law and any state or local provision of public information law requiring disclosure of information or records; and

2. Withheld, without discretion, from the public under federal freedom of information law and any state or local provision of public information law requiring disclosure of information or records.

6 U.S.C. 1504(d)(4)(B) [See CQB]

Information is confidential and not subject to disclosure under the Public Information Act if the information relates to:

1. A cybersecurity measure, policy, or contract solely intended to protect a critical infrastructure facility as defined by Government Code 551.0761 that is located in the jurisdiction of the school district;

2. Coverage limits and deductible amounts for insurance or other risk mitigation coverages acquired for the protection of information technology systems, critical infrastructure, operational technology systems, or data of a district or the amount of money set aside by a district to self-insure against those risks;

3. Cybersecurity incident information reported pursuant to state law; and

4. Network schematics, hardware and software configurations, or encryption information or information that identifies the detection, investigation, or response practices for suspected or confirmed cybersecurity incidents if the disclosure of such information would facilitate unauthorized access to data or information, whether physical or virtual or information technology resources, including a district's existing or proposed information technology system.

For purposes of this exception, "cybersecurity" means the measures taken to protect a computer, a computer network, a com-

puter system, or other technology infrastructure against unauthorized use or access.

Gov't Code 552.1391 (a), (b)

Texas VIRT Information

Information written, produced, collected, assembled, or maintained by a participating district or a volunteer from the district in the implementation of Government Code Chapter 2063, Subchapter F (Texas Volunteer Incident Response Team) is confidential and not subject to disclosure under the Public Information Act if the information:

1. Contains the contact information for a volunteer;
2. Identifies or provides a means of identifying a person who may, as a result of disclosure of the information, become a victim of a cybersecurity incident;
3. Consists of a participating district's cybersecurity plans or cybersecurity-related practices; or
4. Is obtained from a participating district or from a participating district's computer system in the course of providing assistance under Subchapter F.

Gov't Code 2063.510

Military Discharge Records

A military veteran's Department of Defense Form DD-214 or other military discharge record that first comes into the possession of a district on or after September 1, 2003, is confidential for the 75 years following the date it comes into the possession of a district. During that period, the district may only permit inspection, copying, or disclosure of the information contained in the record only in accordance with Government Code 552.140 or a court order. The district is authorized to withhold a Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of the district on or after September 1, 2003, under this provision without the necessity of requesting an attorney general decision. *Gov't Code 552.140(a), (b); Atty. Gen. ORD 684 (2009)*

Limited Use

A district that obtains this information from another governmental body shall limit the district's use and disclosure of the information to the purpose for which the information was obtained. *Gov't Code 552.140(e)*

Firefighter or EMS Work Schedules

A work schedule or a time sheet of a firefighter or volunteer firefighter or emergency medical services personnel as defined by Health and Safety Code 773.003 is confidential and excepted from public disclosure. *Gov't Code 552.159*

Out-of-State Health-Care Provider Information

Information obtained by a district that was provided by an out-of-state health-care provider in connection with a quality management, peer review, or best practices program that the out-of-state health-care provider pays for is confidential and excepted from public disclosure. *Gov't Code 552.162*

Applicant for Disaster Recovery Funds

The following information maintained by a district is confidential:

1. The name, social security number, house number, street name, and telephone number of an individual or household that applies for state or federal disaster recovery funds;
2. The name, tax identification number, address, and telephone number of a business entity or an owner of a business entity that applies for state or federal disaster recovery funds; and
3. Any other information the disclosure of which would identify or tend to identify a person or household that applies for state or federal disaster recovery funds.

The street name and census block group of and the amount of disaster recovery funds awarded to a person or household are not confidential after the date on which disaster recovery funds are awarded to the person or household.

Gov't Code 552.160(b), (c)

Threat of Physical Harm

Information in the custody of a district that relates to an employee or officer of the district is excepted from public disclosure if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm. *Gov't Code 552.152*

Exceptions to Disclosure

The Public Information Act does not prohibit a district or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law. Information voluntarily made available as allowed under this provision must be made available to any person and cannot be withheld from further disclosure. *Gov't Code 552.007; Atty. Gen. ORD 518 (1989)*

Voluntary Disclosure

Right of Access After 75 Years

Except for social security numbers, the confidentiality provisions of the Public Information Act, or as otherwise provided by law, information that is not confidential but is excepted from required disclosure under Government Code Chapter 552, Subchapter C, is public information and is available to the public on or after the 75th anniversary of the date the information was originally created or received by the district. This paragraph does not limit the authority of a district to establish retention periods for records under applicable law. *Gov't Code 552.0215*

Information Relating to Litigation	Information is excepted from public disclosure if it is information relating to litigation of a civil or criminal nature to which a district is, or may be, a party or to which an officer or employee of the district, as a consequence of the office or employment, is or may be a party, but only if the litigation is pending or reasonably anticipated on the date the district's public information officer receives the request. *Gov't Code 552.103(a), (c)*
Election Information	The litigation exception to disclosure does not apply to information requested under the Public Information Act if the information relates to a general, primary, or special election and the information is in the possession of a governmental body that administers elections. *Gov't Code 551.103(d)*
Information Related to Competition or Bidding	Information is excepted from public disclosure if the district demonstrates that the release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the district establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future. Required disclosure under Government Code 552.022 does not apply to information that is excepted from required disclosure under this provision.
Parades, Concerts, and Entertainment Events	Information relating to the receipt or expenditure of public or other funds by a district for a parade, concert, or other entertainment event paid for in whole or part with public funds is not excepted from public disclosure. A person, including a district, may not include a provision in a contract related to an event that prohibits or would otherwise prevent the disclosure of this information. A contract provision that violates Government Code 552.104(c) is void. *Gov't Code 552.104*
Certain Information on Real or Personal Property	Information is excepted from public disclosure if it is information relating to the location of real or personal property for a public purpose prior to public announcement of the project, or information relating to appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property. *Gov't Code 552.105*
Drafts Involving Legislation	A draft or working paper involved in the preparation of proposed legislation is excepted from public disclosure. *Gov't Code 552.106*
Certain Legal Information	Information is excepted from public disclosure if it is not privileged information but information that an attorney of a district is prohibited from disclosing because of a duty to the board under the Texas Rules of Evidence or the Texas Disciplinary Rules of Profes-

sional Conduct, or information that a court order has prohibited from disclosure. *Gov't Code 552.107*

Certain Law Enforcement Information

Information (other than basic information about an arrested person, an arrest, or a crime) held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from public disclosure if:

1. Release of the information would interfere with the detection, investigation, or prosecution of crime; or
2. It is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

An internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from public disclosure if:

1. Release of the internal record or notation would interfere with law enforcement or prosecution; or
2. The internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication.

Basic Information

A district shall promptly release basic information about an arrested person, an arrest, or a crime responsive to a Public Information Act request unless the district seeks to withhold the information as provided by another provision of the PIA. The district shall promptly release the information regardless of whether the district requests an attorney general decision regarding other information subject to the request.

Certain Crime Information

Information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication is not excepted from disclosure of information, records, or notations if:

1. A person who is described by or depicted in the information, record, or notation, other than a peace officer, is deceased or incapacitated; or
2. Each person who is described by or depicted in the information, record, or notation, other than a person who is deceased or incapacitated, consents to the release of the information, record, or notation.

Gov't Code 552.108

Private Correspondence of Elected Official	Private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy are excepted from public disclosure. *Gov't Code 552.109; Industrial Foundation of the South v. Texas Indus. Acc. Bd., 540 S.W.2d 668 (Tex. 1976)*
Trade Secrets	Except as provided by Government Code 552.0222 (disclosure of contracting information), information is excepted from public disclosure if it is demonstrated based on specific factual evidence that the information is a trade secret, as defined by Government Code 552.110(a). *Gov't Code 552.110(b)*
Certain Commercial and Financial Information	Except as provided by Government Code 552.0222 (disclosure of contracting information), commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from public disclosure. *Gov't Code 552.110(c)*
Proprietary Information	Except as provided by Government Code 552.0222 (disclosure of contracting information), information submitted to a district by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from public disclosure if the vendor, contractor, potential vendor, or potential contractor demonstrates based on specific factual evidence that disclosure of the information would be proprietary as specified under Government Code 552.1101(a). This exception to disclosure may be asserted only by a vendor, contractor, potential vendor, or potential contractor in the manner described by Government Code 552.305(b) for the purpose of protecting the interests of the vendor, contractor, potential vendor, or potential contractor. A district must decline to release this information as provided by Government Code 552.305(a) to the extent necessary to allow a vendor, contractor, potential vendor, or potential contractor to assert the exception to disclosure provided by Government Code 552.1101(a) (proprietary information). *Gov't Code 552.1101* [See GBAA for additional procedures related to information involving proprietary interests of a vendor, contractor, or potential vendor or contractor.]
Proprietary Records and Trade Secrets in Certain Partnerships	Information in the custody of a district that relates to a proposal for a qualifying project authorized under Government Code Chapter 2267 is excepted from public disclosure if the information and records meet the criteria outlined at Government Code 552.153(b).

The district is not authorized to withhold information as outlined by Government Code 552.153(c). *Gov't Code 552.153* [See CDH]

Certain Memoranda

An interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with a district is excepted from public disclosure. *Gov't Code 552.111; City of Garland v. Dallas Morning News, 22 S.W.3d 351 (Tex. 2000)*

Audit Working Paper

An audit working paper of an auditor of a school district, including any audit relating to the criminal history background check of a public school employee, is excepted from public disclosure. If information in an audit working paper is also maintained in another record, that other record is not excepted.

"Audit" means an audit authorized or required by a statute of Texas or the United States or a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, and includes an investigation.

"Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including intra-agency and interagency communications and drafts of the audit report or portions of those drafts. *Gov't Code 552.116*

Personal Information of Certain Individuals

Board Members and Others

Option to Restrict Access

Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom Government Code 552.1175(a) applies (including a current or honorably retired peace officer, commissioned security officer, elected public officer, members of the military, a firefighter or volunteer firefighter, current or former election officials, certain higher education leaders, and others), or that reveals whether the individual has family members is confidential and may not be disclosed to the public if the individual to whom the information relates chooses to restrict public access to the information by notifying the district on a form provided by the district with evidence of the individual's status. This choice remains valid until rescinded in writing by the individual.

Redaction and Notice to Requestor

In accordance with Government Code 552.1175(f), a district may redact information that must be withheld under this provision from any information the district discloses under the Public Information Act without the necessity of requesting a decision from the attorney general. If a district redacts information under this provision, the district shall provide the information required by Government Code 552.1175(h) to the requestor on a form prescribed by the attorney

general. The requestor is entitled to seek a decision from the attorney general about the matter.

Gov't Code 552.1175

Board Member and Employee Personnel Information

Information is excepted from public disclosure if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the persons listed at Government Code 552.117(a) or that reveals whether the person has family members. Government Code 552.117(a) includes the following:

1. A current or former district employee or board member, except as provided by Government Code 552.024, below;
2. Certain peace officers, security officers, law enforcement personnel, and first responders;
3. An elected public officer, regardless of whether the officer complies with Government Code 552.024, below, or .1175, above; and
4. A current or former employee of the office of the attorney general or a family member of the employee.

Gov't Code 552.117

Choice To Allow Access

Each current or former employee or board member of a district shall choose whether to allow public access to information in the custody of the district that relates to the person's home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members.

Each current or former employee and board member shall state that person's choice to the main personnel officer of the district in a signed writing not later than the 14th day after the date on which the employee begins employment with the district, the board member is elected or appointed, or the former employee or official ends service with the district.

If the current or former employee or board member fails to state the person's choice within the period established by this provision, the information is subject to public access.

A current or former employee or board member who wishes to close or open public access to the information may request in writing that the main personnel officer of the district close or open access.

Exercising the option to close public access to protect personal information does not apply to a public information request made before the option was exercised.

Gov't Code 552.024; Atty. Gen. ORD 530 (1989)

Redaction and Notice to Requestors

If the current or former employee or board member chooses not to allow public access to the information, the district may redact the information from any information the district discloses without the necessity of requesting a decision from the attorney general. *Gov't Code 552.024(c)*

A district that redacts or withholds information under this provision shall provide the information required by Government Code 552.024(c-2) to the requestor on a form prescribed by the attorney general. The requestor is entitled to seek a decision from the attorney general about the matter. *Gov't Code 552.024(c-1), (c-2)*

Photograph of Peace Officer

A photograph that depicts a peace officer, the release of which would endanger the life or physical safety of the officer, is excepted from public disclosure unless:

1. The officer is under indictment or charged with an offense by information;
2. The officer is a party in a fire or police civil service hearing or a case in arbitration; or
3. The photograph is introduced as evidence in a judicial proceeding.

If a photograph is exempt from public disclosure as described above, it may be made public only if the officer gives written consent.

Gov't Code 552.119

Testing Items

A test item developed by an educational institution that is funded wholly or in part by state revenue or by a district is excepted from public disclosure. *Gov't Code 552.122*

Certain Library Records

A record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service is excepted from public disclosure, unless the record is disclosed:

1. Because the library determines that disclosure is reasonably necessary for the operation of the library and the records are not confidential under other state or federal law;
2. To a person with a special right of access under Government Code 552.023; or

3. To a law enforcement agency or prosecutor under a court order or a subpoena obtained in compliance with this provision.

Gov't Code 552.124

Superintendent Applicants

The name of an applicant for superintendent of a district is excepted from public disclosure, except that the board must give public notice of the name or names of the finalists being considered for that position at least 21 days before the date of the meeting at which final action or a vote is to be taken on the applicant's employment. *Gov't Code 552.126*

Certain Motor Vehicle and Personal Identification Information

Information is excepted from public disclosure if the information relates to:

1. A motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;

2. A motor vehicle title or registration issued by an agency of this state or another state or country; or

3. A personal identification document issued by an agency of this state, another state or country, or a local agency authorized to issue an identification document.

The motor vehicle record information described above may be released only if, and in the manner, authorized by Transportation Code Chapter 730.

Subject to Transportation Code Chapter 730 (the Motor Vehicle Records Disclosure Act), a district may redact motor vehicle or driver license information (including a Texas driver's license number, a copy of a Texas driver's license, a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number) under this provision from any information the district discloses without the necessity of requesting a decision from the attorney general. The district shall provide the information specified at Government Code 552.130(e) to the requestor on a form prescribed by the attorney general. The requestor is entitled to seek a decision from the attorney general about the matter.

Gov't Code 552.130; Atty. Gen. ORD 684 (2009)

Economic Development Negotiations

Information is excepted from public disclosure if the information relates to economic development negotiations involving a board and a business prospect that the board seeks to have locate, stay, or expand in or near a district and the information relates to:

1. A trade secret of the business prospect; or

2. Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Gov't Code 552.131(a)

Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to a business prospect by a board or by another person is excepted from public disclosure.

After an agreement is made, the exception no longer applies to information about a financial or other incentive being offered to the business prospect:

1. By the board; or

2. By another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a district or a reduction in revenue received by the district from any source.

Gov't Code 552.131(b), (c)

[For information regarding economic development negotiations under Government Code Chapter 403, Subchapter T, including the confidentiality of information, see CCGB.]

Social Security Numbers of Any Living Person

Except for the social security number of a district employee in the custody of the district, the social security number of a living person is excepted from public disclosure, but is not confidential under the Public Information Act. A district may redact the social security number of a living person from any information the district discloses to the public without the necessity of requesting a decision from the attorney general. *Gov't Code 552.147(a), (c)*

Exclusions from Public Information

Protected Health Information

An individual's protected health information as defined by Health and Safety Code 181.006 is not public information and is not subject to disclosure under the Public Information Act. *Gov't Code 552.002(d)*

Subpoena or Discovery Request

A subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under the Public Information Act. The Public Information Act does not affect the scope of civil discovery under the Texas Rules of Civil Procedure, and exceptions from disclosure under the PIA do not create new privileges from discovery. *Gov't Code 552.005, .0055*

No Right of Access

Commercially Available Publications

A district is not required under the Public Information Act to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the district for research purposes, if the book or publication is commercially available to the public. Although information in a book or publication may be made available to the public as resource material, such as a library book, a district is not required to make a copy of the information in response to a request for public information.

Exception

The district shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of the board or district.

Gov't Code 552.027

Requests from Incarcerated Individuals

A district is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility or an agent of that individual, other than the individual's attorney when the attorney is requesting information that is subject to disclosure under the Public Information Act. This provision does not prohibit a district from disclosing to an incarcerated individual or the individual's agent information held by the district that pertains to the individual. *Gov't Code 552.028*

Retirement Eligibility Records

Records, including any identifying information, of individual members, annuitants, retirees, beneficiaries, alternate payees, program participants, or persons eligible for benefits from TRS or another retirement system that are in the custody of the system or in the custody of an administering firm, a carrier, the district, or another governmental body, acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure.

An administering firm, carrier, or the district acting in cooperation with or on behalf of the retirement system is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general.

For this provision, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system, or an employee or contractor of an employer covered by the retirement system for whom records were received by the retirement system for the purpose of administering the terms of the plan, including for audit or investigative purposes.

Gov't Code 552.0038(c), (h), 825.507(g)

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[1] Office of the Attorney General and the Public Information Act: https://www.texasattorneygeneral.gov/open-government/office-attorney-general-and-public-information-act

Table of Contents

Officer for Public Information and Required Sign 3
Officer and Agents 3
Training After Failure to Comply 4
PIA Sign 4
Requests for Public Information 5
Method of Requesting Public Information 5
District Response to Requests 6
Uniform Treatment 6
Inquiries by District 6
Statement of Consequences 6
No Responsive Information 7
Time for Production 7
Methods of Production 9
Inspection and Duplication Procedures 10
Requests Requiring Programming or Data Manipulation 11
Repetitious or Redundant Requests 13
Withholding Excepted Information 14
Request for Attorney General Decision Required 14
Request for Attorney General Decision Not Required 19
Response After Attorney General Decision 20
Authorized Costs and Charges 22
Attorney General's Cost Rules 22
Multiple Requests 22
Charges for Producing Copies 23
Charges for Inspection Without Copies 25
Itemized Estimate of Charges 26
Temporary Suspension of Requirements for Districts Impacted by Catastrophe 28
Initial Suspension Period 28
Extension of Initial Suspension Period 28
Maximum Suspension Period Per Catastrophe 29
Notices to the Attorney General 29
Notice to the Public 29
Requests During Suspension Period 30

Pending Requests Tolled....30
Large or Frequent Requests....30
Annual Limits on Personnel Time....30
Written Statement of Cumulative Personnel Time....30
Photo Identification....30
Written Estimate of Charges Beyond Time Limit....31
Unpaid Cost Estimate....31
Filing Suit to Challenge Attorney General's Decision....33
Exception for Affirmative Defenses....33
Suits Over Parent's Request....33
Determination of Failure to Respond....34

Note: For forms prescribed by the attorney general, see the Attorney General's Public Information website.[1]

Officer for Public Information and Required Sign

Officer and Agents

The superintendent of a district is the officer for public information. Each department head is an agent of the officer for public information for purposes of complying with Government Code Chapter 552 (Public Information Act [PIA]).

Duties

The officer is responsible for the release of public information as required by the Public Information Act. Subject to penalties provided by the Public Information Act, the officer for public information shall:

1. Make public information available for public inspection and copying;
2. Carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal;
3. Repair, renovate, or rebind public information when necessary to maintain it properly; and
4. Make reasonable efforts to obtain public information from a temporary custodian if:
    a. The information has been requested from the district;
    b. The officer is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;
    c. The officer is unable to comply with the duties imposed by the Public Information Act without obtaining the information from the temporary custodian; and
    d. The temporary custodian has not provided the information to the officer or the officer's agent.

The officer is not responsible for the use made of the information by the requestor or the release of the information after it is removed from a record as a result of an update, correction, or change of status of the person to whom the information pertains.

Gov't Code 552.201(a)-.204; Keever v. Finlan, 988 S.W.2d 300 (Tex. App.—Dallas 1999, pet. dism'd) (a district's chief administrative officer is the superintendent)

Training

This provision applies to an elected or appointed board member and the officer for public information.

Each person shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the district and its board members and employees under the Public Information Act not later than the 90th day after the date:

1. The board member takes the oath of office; or

2. The officer for public information assumes duties as officer for public information.

A public information coordinator who is primarily responsible for administering the responsibilities of the board under the Public Information Act and designated for board members to satisfy the training requirement of this provision shall complete the training course regarding the responsibilities of the board and district employees under the PIA not later than the 90th day after the date the coordinator assumes the person's duties as coordinator. [See BBD, CPC(LOCAL)]

Designation of a public information coordinator does not relieve a board member from the duty to comply with any other requirement of the Public Information Act that applies to the board member.

A district shall maintain and make available for public inspection the record of its board members' or, if applicable, the public information coordinator's completion of the training.

Gov't Code 552.012(a)-(c), (e)

Training After Failure to Comply

The attorney general may require each elected or appointed board member and the officer for public information of a district to complete the course of training if the attorney general determines that the district has failed to comply with a requirement of the Public Information Act. The attorney general must notify each person in writing of the attorney general's determination and the requirement to complete the training. A person who receives notice from the attorney general under this provision must complete the training not later than the 60th day after the date the person receives the notice. *Gov't Code 552.012(a),(b-1)*

PIA Sign

The officer for public information shall prominently display a sign (PIA sign) in the form prescribed by the attorney general that contains basic information about the rights of a requestor, the responsibilities of a district, and the procedures for inspecting or obtaining a copy of public information under the Public Information Act. The officer shall display the sign at one or more places in the district's administrative offices where it is plainly visible to:

1. Members of the public who request public information in person; and

2. Employees of the district whose duties include receiving or responding to public information requests.

Gov't Code 552.205(a)

Requests for Public Information

A person may make a written request for public information only by delivering the request by one of the following methods to the officer for public information or a person designated by that officer:

Method of Requesting Public Information

1. United States mail;
2. Electronic mail;
3. Hand delivery; or
4. Any other appropriate method approved by the district, including facsimile transmission and electronic submission through the district's website.

A district is considered to have approved another method only if the district includes a statement on the PIA sign or the district's website that states a request for public information may be made by that method.

Designated Addresses to Receive Requests

A district may designate one mailing address and one electronic mail address for receiving written requests for public information and shall provide the designated mailing address and electronic mailing address to any person on request.

A district that posts a designated mailing address or electronic mail address on the district's website or that prints those addresses on the PIA sign is not required to respond to a written request for public information unless the request is received:

1. At one of those addresses;
2. By hand delivery; or
3. By a method described above that has been approved by the district.

Gov't Code 552.234(c), (d)

Notification to Attorney General

Not later than October 1 each year, a school district shall notify the attorney general of the current mailing address and electronic mail address designated by the governmental body for receiving written requests for public information.

The attorney general shall create and maintain on the office of the attorney general's website a publicly accessible database of the

mailing addresses and electronic mail addresses provided by governmental bodies, including districts.

Gov't Code 552.234(e), (f)

Optional Request Form

The attorney general shall create a public information request form that provides a requestor the option of excluding from a request information that the district determines is:

1. Confidential; or
2. Subject to an exception to disclosure that the district would assert if the information were subject to the request.

A district that allows requestors to use the attorney general's form and maintains a website shall post the form on its website.

Gov't Code 552.235

District Response to Requests

Uniform Treatment

The officer for public information or the officer's agent shall treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media. *Gov't Code 552.223*

Inquiries by District

The officer for public information and the officer's agent may not make an inquiry of a requestor except to establish proper identification or except as provided below.

Requests to Clarify or Narrow

If what information is requested is unclear to the district, the district may ask the requestor to clarify the request. If a large amount of information has been requested, the district may discuss with the requestor how the scope of the request might be narrowed, but the district may not inquire into the purpose for which the information will be used.

Additional Information for Vehicle Records

If the information requested relates to a motor vehicle record, the officer for public information or agent may require the requestor to provide additional identifying information sufficient for the officer or agent to determine whether the requestor is eligible to receive the information under Transportation Code Chapter 730. In this provision, "motor vehicle record" has the meaning assigned that term by Transportation Code 730.003.

Gov't Code 552.222(a)-(c)

Statement of Consequences

A written request for clarification or discussion or for additional information, as described above, must include a statement as to the consequences of the failure by the requestor to timely respond to the request for clarification, discussion, or additional information. *Gov't Code 552.222(e)*

Requestor's Failure to Respond

If by the 61st day after the date the district sends a written request for clarification or discussion or for additional information, as described above, the district, officer for public information, or agent does not receive a written response from the requestor, the underlying request for public information is considered to have been withdrawn by the requestor.

Exception to Automatic Withdrawal

Except when the requestor's information request was sent by electronic mail, described below, if the requestor's information request included the requestor's physical or mailing address, the request may not be considered to have been withdrawn unless the district or officer for public information or agent sends the request for clarification or discussion or for additional information, as described above, to that address by certified mail.

If the requestor's information request was sent by electronic mail, the request may be considered to have been withdrawn if:

1. The district, officer for public information, or agent sends the request for clarification or discussion or the written request for additional information by electronic mail to the same electronic mail address from which the original request was sent or to another electronic mail address provided by the requestor; and

2. The district, officer for public information, or agent does not receive from the requestor a written response or response by electronic mail within the period described by Government Code 552.222(d).

Gov't Code 552.222(d), (f)-(g)

No Responsive Information

If the district determines it has no information responsive to a request for information, the officer for public information shall notify the requestor in writing not later than the 10th business day after the date the request is received. *Gov't Code 552.221(f)*

Time for Production

Promptly

An officer for public information shall promptly produce public information for inspection, duplication, or both, on application by any person to the officer. "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay. A district may not automatically withhold for 10 business days public information not excepted from disclosure. *Gov't Code 552.221(a); Atty. Gen. ORD 664 (2000)*

Business Day

In the Public Information Act, "business day" means a day other than a Saturday or Sunday, a national holiday, or a state holiday [see below].

Rosh Hashanah, Yom Kippur, or Good Friday are not business days of a district if the officer for public information of the district observes the optional holidays.

The Friday before or Monday after a national or state holiday is not a business day of a district if the holiday occurs on a Saturday or Sunday and the district observes the holiday on that Friday or Monday.

The fact that an employee works from an alternative work site does not affect whether a day is considered a business day.

Locally Designated Nonbusiness Days

A district may designate a day on which the district's administrative offices are closed or operating with minimum staffing as a nonbusiness day. The designation of a nonbusiness day for a district must be made by the board. A district may designate not more than 10 nonbusiness days under this subsection each calendar year.

Gov't Code 552.0031(a)-(c), (e)-(f), 662.003(c)

National Holidays

A national holiday includes only the following days:

1. The first day of January, "New Year's Day";
2. The third Monday in January, "Martin Luther King, Jr., Day" in observance of the birthday of Dr. Martin Luther King, Jr.;
3. The third Monday in February, "Presidents' Day";
4. The last Monday in May, "Memorial Day";
5. The fourth day of July, "Independence Day";
6. The first Monday in September, "Labor Day";
7. The 11th day of November, "Veterans Day," dedicated to the cause of world peace and to honoring the veterans of all wars in which Texans and other Americans have fought;
8. The fourth Thursday in November, "Thanksgiving Day"; and
9. The 25th day of December, "Christmas Day."

State Holidays

A state holiday includes only the following days:

1. The 19th day of January, "Confederate Heroes Day," in honor of Jefferson Davis, Robert E. Lee, and other Confederate heroes;
2. The second day of March, "Texas Independence Day";
3. The 21st day of April, "San Jacinto Day";

4. The 19th day of June, “Emancipation Day in Texas,” in honor of the emancipation of the slaves in Texas in 1865;
5. The 27th day of August, “Lyndon Baines Johnson Day, in observance of the birthday of Lyndon Baines Johnson;
6. The Friday after Thanksgiving Day;
7. The 24th day of December; and
8. The 26th day of December.

Gov’t Code 662.003(a)-(b)

Certifications of Availability

If an officer for public information cannot produce the public information for inspection or duplication within 10 business days after the date the information is requested, the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

If the requested information is unavailable at the time of the request to examine because it is in storage or active use, an officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

Gov’t Code 552.221(c), (d)

Administrative Offices Closed

Unless the district has initiated a temporary suspension of the Public Information Act during a catastrophe [see below], if a district closes its physical offices, but requires staff to work, including remotely, then the district shall make a good faith effort to continue responding to applications for public information, to the extent staff have access to public information responsive to an application while its administrative offices are closed.

Failure to respond to requests may constitute a refusal to request an attorney general’s decision or a refusal to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure.

Gov’t Code 552.2211

Methods of Production

An officer for public information complies with the requirement to promptly produce public information by:

1. Providing the information for inspection or duplication in the offices of a district. The Public Information Act does not authorize a requestor to remove an original copy of a public record from the office of a district;

2. Sending copies of the information by first class United States mail, if the requestor requests that copies be provided and pays the postage and any other applicable charges that the requestor has accrued under Government Code Chapter 552, Subchapter F [see Authorized Costs and Charges, below]; or

3. Referring a requestor to an exact internet location or uniform resource locator (URL) address on a website maintained by the district and accessible to the public if the requested information is identifiable and readily available on that website. If the person requesting the information prefers a manner other than access through the URL, the district must supply the information in the manner described above at items 1 and 2.

   If the officer for public information provides by email an internet location or URL address as permitted by item 3, above, the email must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through United States mail, as described above at items 1 and 2.

Gov't Code 552.221(b)-(b-2), .226

Inspection and Duplication Procedures

A district may promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay. These rules may not be inconsistent with any provision of the Public Information Act. *Gov't Code 552.230*

The officer for public information or agent shall give the requestor all reasonable comfort and facility for the full exercise of the right granted by the Public Information Act. *Gov't Code 552.224*

Time For District to Provide Copies

It shall be a policy of a district to provide a suitable copy of public information within a reasonable time after the date on which the copy is requested. *Gov't Code 552.228(a)*

Time for Requestor to Appear and Complete Inspection

A request is considered to have been withdrawn if the requestor fails to inspect or duplicate the public information in district offices on or before the 60th day after the date the information is made available or fails to pay the postage and any other applicable charges accrued under Government Code Chapter 552, Subchapter F on or before the 60th day after the date the requestor is informed of the charges.

A requestor must complete the examination of the information not later than the 10th business day after the date the custodian of the information makes it available. If the requestor does not complete the examination within 10 business days and does not file a request for additional time under Government Code 552.225(b) (de-

scribed below), the requestor is considered to have withdrawn the request.

The officer for public information shall extend the initial examination period by an additional 10 business days if, within the initial period, the requestor files with the officer a written request for additional time. The officer shall extend an additional examination period by another 10 business days if, within the first additional period, the requestor files with the officer a written request for more additional time.

The time during which a person may examine information may be interrupted by the officer if the information is needed for use by the district. The period of interruption is not considered to be a part of the time during which the person may examine the information.

Gov't Code 552.221(e), .225

Electronic Data

If public information exists in an electronic or magnetic medium, the requestor may request a copy in an electronic medium, such as on diskette or on magnetic tape. A district shall provide a copy in the requested medium if:

1. The district has the technological ability to produce a copy of the information in the requested medium;
2. The district is not required to purchase any software or hardware to accommodate the request; and
3. Provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the district and a third party.

If a district is unable to comply with a request to produce a copy of information in a requested medium for any of these reasons, the district shall provide a copy in another medium that is acceptable to the requestor. A district is not required to copy information onto a diskette or other material provided by the requestor but may use district supplies.

Gov't Code 552.228(b), (c)

Requests Requiring Programming or Data Manipulation

Written Statement Required

A district shall provide to a requestor a written statement, described below, if the district determines:

1. That responding to a request for information will require programming or manipulation of data; and
2. That:
   a. Compliance with the request is not feasible or will result in substantial interference with operations; or

b. The information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

The written statement shall include:

1. A statement that the information is not available in the requested form;
2. A description of the form in which the information is available;
3. A description of any contract or services that would be required to provide the information in the requested form;
4. A statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the attorney general under Government Code 552.262; and
5. A statement of the anticipated time required to provide the information in the requested form.

Time For Programming or Manipulation Statement

A district shall provide the written statement to the requestor within 20 days after the date the district receives the request. The district has an additional 10 days to provide the statement if the district gives written notice to the requestor, within 20 days after receiving the request, that additional time is needed.

Requestor Reply Required

On providing the written statement described above, the district does not have any further obligation to provide the information in the requested form or in the form in which it is available, unless within 30 days the requestor states in writing that the requestor:

1. Wants the district to provide the information in the requested form according to the cost and time parameters set out in the written statement or according to other terms to which the requestor and the district agree; or
2. Wants the information in the form in which it is available.

If a requestor does not make a timely written statement to the district, the requestor is considered to have withdrawn the request for information.

Processing Procedures and Recordkeeping

The officer for public information shall establish policies that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data. A district shall maintain a file containing all written statements issued concerning responding to requests for information that require programming or manipulation of data in a readily accessible location.

Gov't Code 552.231

Repetitious or Redundant Requests

A district that determines a requestor has made a request for information for which the district has previously furnished or made copies available to the requestor on payment of applicable charges must respond to the request, in relation to the information for which copies have already been furnished or made available, except that:

1. The district is not prohibited from furnishing the information or making the information available to the requestor again in accordance with the request; and
2. The district is not required to comply with these provisions in relation to information that the district simply furnishes or makes available to the requestor again in accordance with the request.

Gov't Code 552.232(a)

These provisions do not apply to information not previously furnished to a requestor or made copies available to the requestor on payment of applicable charges.

A request by the requestor for information for which copies have not previously been furnished or made available to the requestor, including information for which copies were not furnished or made available because the information was redacted from other information that was furnished or made available or because the information did not exist at the time of an earlier request shall be treated in the same manner as any other request for public information under the Public Information Act.

Gov't Code 552.232(d)

Certification of Previous Production

A district shall certify to the requestor that copies of all or part of the requested information were previously furnished or made available to the requestor. The certification must include:

1. A description of the information for which copies have been previously furnished or made available to the requestor;
2. The date the district received the requestor's original request for that information;
3. The date the district previously furnished copies or made available copies of the information to the requestor;
4. A certification that no subsequent additions, deletions, or corrections have been made to that information; and
5. The name, title, and signature of the officer for public information or agent making the certification.

A charge may not be imposed for making and finishing this certification.

Gov't Code 552.232(b), (c)

Withholding Excepted Information

Request for Attorney General Decision Required

A district that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions to required disclosure under Government Code Chapter 552, Subchapter C [see GBA] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions [see Request for Attorney General Decision Not Required, below]. *Gov't Code 552.301(a)*

Consequences of Missed Deadlines

If a district does not request an attorney general decision and provides the requestor with the information required by Government Code 552.301(d) and (e-1) [see Information to Requestor, below], the information requested in writing is presumed to be subject to public disclosure and must be released unless there is a compelling reason to withhold it. *Gov't Code 552.302*

Electronic Submission

A district that requests an attorney general decision must submit the request through the attorney general's designated electronic filing system. This requirement does not apply if:

1. The district has fewer than 16 full-time employees;
2. The district is located in a county with a population of less than 150,000;
3. The amount or format of responsive information at issue in a particular request makes use of the attorney general's electronic filing system impractical or impossible; or
4. The request is hand delivered to the office of the attorney general.

Gov't Code 552.3031(a)-(b)

Request and Submissions to Attorney General

The district must ask for the attorney general's decision and state the specific exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

When a district requests an attorney general decision, it shall, within a reasonable time but not later than the 15th business day after receiving the request for information, submit to the attorney general all of the following:

1. Written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;
2. A copy of the written request for information;
3. A signed statement as to the date on which the written request for information was received by the district or evidence sufficient to establish that date; and
4. A copy of the specific information requested, or representative samples of the information if a voluminous amount of information was requested. The district shall label the copies or representative samples to indicate which exceptions apply to which parts of the copy.

Gov't Code 552.301(b), (e)

Information to Requestor

A district that requests an attorney general decision shall provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

1. A written statement that the district wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and
2. A copy of the district's written communication to the attorney general asking for the decision. If a district's written communication to the attorney general discloses the requested information, the district shall provide a redacted copy of that written communication.

The district shall send a copy of the comments to the requestor not later than the 15th business day after the district receives the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the requestor shall be redacted.

Gov't Code 552.301(d), (e-1)

Calculating Timeliness

For the purposes of Government Code Chapter 552, Subchapter G (Attorney General Decisions), if a district receives a written request by United States mail and cannot adequately establish the actual date of receipt, the request is considered to have been received by the district on the third business day after the date of the postmark on a properly addressed request. *Gov't Code 552.301(a-1)*

When Government Code Chapter 552, Subchapter G requires a request, notice, or other document to be submitted or otherwise given to the attorney general within a specified period, the require-

ment is met in a timely fashion if the district submits the document through the attorney general's designated electronic filing system within that period. This provision does not affect the right of a district to submit information to the attorney general by specified methods of mail under Government Code 552.308.

When the attorney general is required to deliver a notice, decision, or other document within a specified period, the requirement is met in a timely fashion if the attorney general electronically transmits the document within that period.

For information surrendered or returned to a district by a temporary custodian, the district is considered to receive the request for that information on the date the information is surrendered or returned to the district. [See GB]

Gov't Code 552.233(d), .309

Except as required by Government Code 552.031 (electronic submission [see above]), when the attorney general decision process requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and:

1. It bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within that period; or

2. The person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that period.

Gov't Code 552.308

Third Party Privacy or Property Interests

In a case in which information is requested under the Public Information Act and a person's privacy or property interests may be involved, including a case under Government Code 552.101 (information confidential by law), 552.110 (trade secrets), 552.1101 (proprietary information), 552.114 (student records), 552.131 (economic development information), or 552.143 (investment information), a district may decline to release the information for the purpose of requesting a decision from the attorney general.

Third Party Submissions

A person whose interests may be involved as described above, or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released. A district may, but is not required to, submit its reasons why the information should be withheld or released. The propri-

etary information exception to disclosure provided by Government Code 552.1101(a) may be asserted only by a vendor, contractor, potential vendor, or potential contractor in the manner described by Government Code 552.305(b) for the purpose of protecting the interests of the vendor, contractor, potential vendor, or potential contractor.

Gov't Code 552.305(a)-(c), .1101(c)

Notice to Third Party

If release of a person's proprietary information may be subject to exception under Government Code 552.101 (information confidential by law), 552.110 (trade secrets), 552.1101 (proprietary information), 552.113 (geological or geophysical information), 552.131 (economic development information), or 552.143 (investment information), a district that requests an attorney general decision shall make a good faith attempt to notify that person of its request. The notice must:

1. Be in writing and sent within a reasonable time not later than the 10th business day after the district receives the request for information; and

2. Include:

    a. A copy of the written request for information, if any, received by the district; and

    b. A statement, in the form prescribed by the attorney general, that the person is entitled to submit to the attorney general, not later than the 10th business day after the person receives the notice:

        (1) Each reason the person has as to why the information should be withheld; and

        (2) A letter, memorandum, or brief in support of that reason.

A person who submits a letter, memorandum, or brief to the attorney general under this provision shall send a copy of that letter, memorandum, or brief to the person who requested the information from the district. If the letter, memorandum, or brief submitted to the attorney general contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.

Gov't Code 552.305(d), (e)

Requests for Contracting Information Not Maintained by the District

"Contracting information" means the following information maintained by a district or sent between a district and a vendor, contractor, potential vendor, or potential contractor:

1. Information in a voucher or contract relating to the receipt or expenditure of public funds by a district;
2. Solicitation or bid documents relating to a contract with a district;
3. Communications sent between a district and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;
4. Documents, including bid tabulations, showing the criteria by which a district evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and
5. Communications and other information sent between a district and a vendor or contractor related to the performance of a final contract with the district or work performed on behalf of the district.

Gov't Code 552.003(1-a)

Government Code 552.371 applies to an entity that is not a governmental body that executes a contract with a district that:

1. Has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by the district; or
2. Results in the expenditure of at least $1 million in public funds for the purchase of goods or services by the district in a fiscal year of the district.

Government Code 552.371 applies to a written request for public information received by a district that is party to a contract described above for contracting information related to the contract that is in the custody or possession of the entity and not maintained by the district.

Gov't Code 552.371(a), (b)

District Request to Contracting Entity

A district that receives a written request for contracting information shall request that the entity provide the information to the district. The district must send the request in writing to the party not later than the third business day after the date the district receives the written request. *Gov't Code 552.371(c)*

Requesting Decision About Contracting Information

A district's request for an attorney general's decision to determine whether contracting information not maintained by the district falls within an exception to disclosure under the Public Information Act is considered timely if made not later than the 13th business day after the date the district receives the written request described above. *Gov't Code 552.371(d)(1)*

The statement and copy described above [see Information to Requestor] is considered timely if provided to the requestor not later than the 13th business day after the date the district receives the written request. *Gov't Code 552.371(d)(2)*

A submission and copy described above [see Request and Submissions to Attorney General] is considered timely if sent not later than the 18th business day after the date the district receives the written request. *Gov't Code 552.371(d)(3), (4)*

The presumption that information is subject to disclosure for failing to comply with Government Code 552.301 [see Request and Submissions to Attorney General, above] does not apply if a district:

1. Complies with the requirements of Government Code 552.371(c) in a good faith effort to obtain contracting information not maintained by the district;
2. Is unable to meet a deadline because the contracting entity failed to provide the information to the district not later than the 13th business day after the date the district received the written request for the information; and
3. Complies with all notice requirements not later than the eighth business day after the date the district receives the information from the contracting entity.

Gov't Code 552.371(e)

Nothing in Government Code 552.371 affects the deadlines or duties of a district related to requesting an attorney general opinion regarding contracting information the district maintains. *Gov't Code 552.371(f)*

Request for Attorney General Decision Not Required

Previous Determinations

Same Information

A district must release the requested information and is prohibited from asking for a decision from the attorney general about whether information requested under this chapter is within an exception under Government Code Chapter 552, Subchapter C if the district has previously requested and received a determination from the attorney general concerning the precise information at issue in a pending request and the attorney general or a court determined that the information is public information that is not excepted by Subchapter C. *Gov't Code 552.301(f)*

Categories of Previously Determined Information

A district may rely on a previous determination by the attorney general regarding a specific, clearly delineated category of information if:

1. The previous decision is applicable to a school district;
2. The previous decision concludes that the category of information is or is not excepted from public disclosure;
3. The elements of law, fact, and circumstances are met to support the previous decision's conclusion that the requested records and information at issue are or are not excepted from public disclosure; and
4. The previous decision explicitly provides that the governmental body or bodies, such as the district, to which the decision applies may withhold the information without the necessity of seeking a decision from the attorney general.

Atty. Gen. ORD 673 (2001)

Notification to Requestor

If a district that determines the requested information is subject to a previous determination that permits or requires the district to withhold the requested information, the officer for public information shall notify the requestor in writing that the information is being withheld and identify in the notice the specific previous determination the governmental body is relying on to withhold the requested information. The officer for public information shall provide the notification not later than the 10th business day after the date the request is received. *Gov't Code 552.221(g)*

When Request Is Allowed for Previous Determination

A district may ask for another decision from the attorney general concerning the precise information that was at issue in a prior decision made by the attorney general if:

1. A suit challenging the prior decision was timely filed against the attorney general in accordance with the Public Information Act concerning the precise information at issue;
2. The attorney general determines that the requestor has voluntarily withdrawn the request for the information in writing or has abandoned the request; and
3. The parties agree to dismiss the lawsuit.

Gov't Code 552.301(g)

Response After Attorney General Decision

A district shall as soon as practicable but within a reasonable period of time after the date the attorney general issues an opinion regarding information requested under the Public Information Act:

1. Provide the requestor of the information an itemized estimate of charges for production of the information if the estimate is required by Government Code 552.2615;

2. If the requested information is voluminous:

   a. Take the following actions if the district determines that it is able to disclose the information in a single batch:

      (1) Provide a written certified notice to the requestor and the attorney general that it is impractical or impossible for the district to produce the information within a reasonable period of time;

      (2) Include in the notice the date and hour that the district will disclose the information to the requestor, which may not be later than the 15th business day after the date the district provides the notice; and

      (3) Produce the information at the date and time included in the notice; or

   b. Take the following actions if the district determines that it is unable to disclose the information in a single batch:

      (1) Provide a written certified notice to the requestor and the attorney general that it is impractical or impossible for the district to produce the information within a reasonable period of time and in a single batch;

      (2) Include in the notice the date and hour that the district will disclose the first batch of information to the requestor, which may not be later than the 15th business day after the date the district provides the notice;

      (3) Provide a written certified notice to the requestor and the attorney general when each subsequent batch of information is disclosed to the requestor of the date and hour that the district will disclose the next batch of information to the requestor, which may not be later than the 15th business day after the date the district provides the notice; and

      (4) Produce the requested information at each date and time included in a notice;

3. Produce the information if it is required to be produced;

4. Notify the requestor in writing that the district is withholding the information as authorized by the opinion; or

5. Notify the requestor in writing that the district has filed suit against the attorney general under Government Code 552.324 [see Filing Suit to Challenge Attorney General's Decision, below] regarding the information.

A district is presumed to have complied with the above requirements if the district takes an action regarding information that is the subject of an opinion issued by the attorney general not later than the 30th day after the date the attorney general issues the opinion.

Gov't Code 552.306(c)-(d)

Note: For rules regarding the attorney general's review of redactions, see 1 Administrative Code Chapter 63. For complete cost rules issued by the attorney general, see 1 Administrative Code Chapter 70.

Authorized Costs and Charges

Attorney General's Cost Rules

A district shall use the attorney general's rules to determine the charges for providing copies of public information and to determine the charge, deposit, or bond required for making public information that exists in a paper record available for inspection, except to the extent that other law provides for charges for specific kinds of public information. The charges for providing copies of public information may not be excessive and may not exceed the actual cost of producing the information or for making public information that exists in a paper record available for inspection.

A district may determine its own charges for providing copies of public information and its own charge, deposit, or bond for making public information that exists in a paper record available for inspection. However, a district may not charge an amount that is greater than 25 percent more than the amount established by the attorney general, unless the district requests an exemption.

Gov't Code 552.262(a); 1 TAC 70.1(b), .3, .10.

Exemption

A district may request that it be exempt from part or all of the rules adopted by the attorney general for determining charges. The request must be made in writing to the attorney general and must state the reason for the exemption. If a district receives notice from the attorney general that an exemption has been granted, the district may amend its charges according to the attorney general's determination. *Gov't Code 552.262(c)*

Multiple Requests

All requests received in one calendar day from an individual may be treated as a single request for purposes of calculating costs. A

district may not combine multiple requests from separate individuals who submit requests on behalf of an organization. *Gov't Code 552.261(e)*

Charges for Producing Copies

The charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the information, including costs of materials, labor, and overhead.

50 Pages or Less

If a request is for 50 or fewer pages of paper records, the charge for providing the copy of the information may not include costs of materials, labor, or overhead, but shall be limited to the charge for each page of the paper record that is photocopied, unless the pages to be photocopied are located in two or more separate buildings that are not physically connected with each other or a remote storage facility. A connection of two buildings by a covered or open sidewalk, an elevated or underground passageway, or a similar facility is insufficient to cause the buildings to be considered separate buildings.

Statement of Labor Costs

If the charge for providing a copy of public information includes costs of labor, the requestor may require the officer for public information or agent to provide the requestor with a written statement as to the amount of time that was required to produce and provide the copy. The statement must be signed by the officer or agent, and the officer or agent's name must be typed or legibly printed below the signature. A charge may not be imposed for providing the written statement to the requestor.

Accrual of Charges

Charges for providing a copy of public information are considered to accrue at the time the district advises the requestor that the copy is available on payment of the applicable charges.

Gov't Code 552.261(a)-(d)

Deposit or Bond for Copies

The officer for public information or agent may require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information if:

1. The officer or agent has provided the requestor with the written itemized statement required by Government Code 552.2615 (itemized estimate of charges, below); and
2. The charge for providing the copy is estimated by the district to exceed $100, if the district has more than 15 full-time employees, or $50, if the district has fewer than 16 full-time employees.

The officer or agent may not require a deposit or bond as a down payment for copies of public information that the requestor may request in the future.

Gov't Code 552.263(a), (b)

Effect on Timelines

For purposes of Government Code Chapter 552, Subchapters F (Charges for Providing Copies of Public Information) and G (Attorney General Decisions), a request for a copy of public information is considered to have been received by the district on the date the district receives the deposit or bond for payment of anticipated costs or unpaid amounts if the officer for public information or agent requires a deposit or bond.

A requestor who fails to make such a deposit or post such a bond for payment of anticipated costs for the preparation of copies before the 10th business day after the date the deposit or bond is required is considered to have withdrawn the request for the copy of public information that precipitated the requirement of the deposit or bond.

Gov't Code 552.263(e), (f)

Modified Request

If a requestor modifies a request in response to the requirement of a deposit or bond, the modified request is considered a separate request and is considered received on the date the district receives the written modified request. *Gov't Code 552.263(e-1)*

Unpaid Amounts

The officer for public information or agent may require a deposit or bond for payment of unpaid amounts the requestor owes a district in relation to previous public information requests before preparing a copy of public information in response to a new request, if those unpaid amounts exceed $100. The officer for public information or agent may not seek payment of those unpaid amounts through any other means.

Documentation of Unpaid Amounts

A district must fully document the existence and amount of those unpaid amounts or the amount of any anticipated costs before requiring a deposit or bond. The documentation is subject to required public disclosure.

Gov't Code 552.263(c), (d)

Pre-Payments

A district that receives a request from a requestor to produce public information for inspection or publication or to produce copies of public information in response to a requestor who, within the preceding 180 days, has accepted but failed to pay written itemized statements of estimated charges from the district as provided under Government Code 552.261(b) (statement of labor costs, above) may require the requestor to pay the estimated charges for the request before the request is fulfilled. *Gov't Code 552.2661*

Waivers

A district shall provide a copy of public information without charge or at a reduced charge if the district determines that waiver or reduction of the charge is in the public interest because providing the information primarily benefits the general public.

If the cost to a district of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the district may waive the charge.

Gov't Code 552.267

District Publications

Government Code Chapter 552, Subchapter F (charges for providing copies of public information) does not apply to a publication that is compiled and printed by or for a district for public dissemination. If the cost of the publication is not determined by state law, a district may determine the charge for providing the publication. This provision does not prohibit the district from providing the publication free of charge if state law does not require that a certain charge be made. *Gov't Code 552.270*

Copies for Parents

A district may charge a reasonable fee in accordance with the above requirements for copies of materials provided to parents pursuant to Education Code Chapter 26. *Education Code 26.012*

Charges for Inspection Without Copies

If the requestor does not request a copy of public information, a district may not impose a charge for making available for inspection any public information that exists in a paper record, except as set forth below.

Copy of Edited Page

If a page contains confidential information that must be edited from the record before the information can be made available for inspection, the district may charge for the cost of making a photocopy of the page from which the confidential information must be edited. No charge other than the cost of the photocopy may be imposed.

Payment, Deposit, or Bond for Inspections

The officer for public information or agent may require a requestor to pay, or to make a deposit or post a bond for the payment of, anticipated personnel costs for making available for inspection public information that exists in paper records if:

1. The information specifically requested by the requestor is older than five years or completely fills, or when assembled will completely fill, six or more archival boxes; and

2. The officer for public information or agent estimates that more than five hours will be required to make the information available for inspection.

Gov't Code 552.271(a)-(c)

Exception for Certain Small Districts

If a district has fewer than 16 full-time employees, the payment, deposit, or bond may be required only if:

1. The information specifically requested by the requestor is older than three years or completely fills, or when assembled will completely fill, three or more archival boxes; and

2. The officer for public information or agent estimates that more than two hours will be required to make the information available for inspection.

Gov't Code 552.271(d)

Inspection of Electronic Records

In response to a request to inspect information that exists in an electronic medium and that is not available directly online to the requestor, a charge may not be imposed for access to the information unless complying with the request will require programming or manipulation of data. If programming or manipulation of data is required, a district shall notify the requestor before assembling the information and provide the requestor with an estimate of charges that will be imposed to make the information available [see also Requests Requiring Programming or Data Manipulation, above].

If public information exists in an electronic form on a computer owned or leased by a district and if the public has direct access to that computer through a computer network or other means, the electronic form of the information may be electronically copied from that computer without charge if accessing the information does not require processing, programming, or manipulation on the district-owned or district-leased computer before the information is copied. If such information also requires processing, programming, or manipulation before it can be electronically copied, a district may impose charges.

If information is created or kept in an electronic form, a district is encouraged to explore options to separate confidential information from public information and make the public information available to the public through electronic access through a computer network or by other means.

Gov't Code 552.272

Itemized Estimate of Charges

If a request for a copy of public information will result in the imposition of a charge that exceeds $40, or a request to inspect a paper record without requesting copies will result in the imposition of a charge that exceeds $40, a district shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. If an alternative less costly method of viewing the records is available, the statement must include a notice that the

requestor may contact the district regarding the alternative method. A district must inform the requestor of the responsibilities imposed on the requestor by Government Code 552.2615 and the rights granted by that section and give the requestor the information needed to respond as detailed in Government Code 552.2615(a).

If, after a district provides the requestor the itemized statement but before it makes the copy or the paper record available, the district determines that the estimated charges will exceed the charges detailed in the original itemized statement by 20 percent or more, the district shall send to the requestor an updated written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs.

Requestor's Response

A request for which a district is required to produce an (original or updated) itemized statement of estimated charges is considered to have been withdrawn if the requestor does not respond in writing to the itemized statement by informing the district within 10 business days after the date the statement is sent to the requestor that:

1. The requestor will accept the estimated charges;
2. The requestor is modifying the request in response to the itemized statement; or
3. The requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

Actual Charges

If the actual charges exceed $40, the charges may not exceed:

1. The amount estimated in the updated itemized statement; or
2. If an updated itemized statement is not sent to the requestor, an amount that exceeds by 20 percent or more the amount estimated in the original itemized statement.

No Effect on Deadlines To Request Attorney General Decision

An original or updated itemized statement is considered to have been sent by a district, and a requestor is considered to have responded to the statement, on the date that the statement or response is:

1. Delivered in person;
2. Deposited, properly addressed, in the United States mail; or
3. Transmitted by electronic mail or facsimile, provided the requestor agrees to receive the statement by those means.

The time deadlines for providing or responding to the required statement of estimated charges do not affect the application of a time deadline imposed on a district for requesting a decision by the

attorney general under Government Code Chapter 552, Subchapter G.

Gov't Code 552.2615

Temporary Suspension of Requirements for Districts Impacted by Catastrophe

The requirements of the Public Information Act do not apply to a district that is currently significantly impacted by a catastrophe such that the catastrophe directly causes the inability of the district to comply with the requirements of the PIA and the district complies with requirements below to elect a suspension period.

"Catastrophe" means a condition or occurrence that directly interferes with the ability of a district to comply with the requirements of the PIA, including:

1. Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
2. Power failure, transportation failure, or interruption of communication facilities;
3. Epidemic; or
4. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

"Catastrophe" does not mean a period when staff is required to work remotely and can access information responsive to an application for information electronically, but the physical office of the governmental body is closed.

"Suspension period" means the period of time during which a district may suspend the applicability of the requirements of the Public Information Act.

Initial Suspension Period

A district may suspend the applicability of the Public Information Act to the district for an initial suspension period only once for each catastrophe, which may not exceed seven consecutive days and must occur during the period that:

1. Begins not earlier than the second day before the date the district submits notice to the attorney general; and
2. Ends not later than the seventh day after the date the district submits that notice.

Extension of Initial Suspension Period

A board may extend an initial suspension period if the board determines that the district is still impacted by the catastrophe on which the initial suspension period was based. The initial suspension period may be extended one time for not more than seven consecutive days that begin on the day following the day the initial suspension period ends.

Maximum Suspension Period Per Catastrophe

A board that initiates an initial suspension period may not initiate another suspension period related to the same catastrophe, except for a single extension period as described above.

The combined suspension period for a district filing for both an initial suspension period and a subsequent extension may not exceed a total of 14 consecutive calendar days with respect to any single catastrophe.

Upon conclusion of any suspension period the district shall immediately resume compliance with all requirements of the Public Information Act.

Notices to the Attorney General

A district that elects to suspend the Public Information Act must submit notice to the attorney general that the district is currently impacted by a catastrophe and has elected to suspend the applicability of the PIA during the initial suspension period.

A board that elects to extend an initial suspension period must submit notice of the extension on the form prescribed by the attorney general.

The notices on the form prescribed by the attorney general must require the district to:

1. Identify and describe the catastrophe that the district is currently impacted by;
2. State the date the initial suspension period determined by the board begins and the date that period ends;
3. If the board has determined to extend the initial suspension period:
    a. State that the district continues to be impacted by the catastrophe; and
    b. State the date the extension to the initial suspension period begins and the date the period ends; and
4. Provide any other information the office of the attorney general determines necessary.

Notice to the Public

A district that elects to suspend the Public Information Act must provide notice to the public of the suspension in a place readily accessible to the public and in each other location the district is required to post a notice under Government Code Chapter 551, Subchapter C (Notice of Meetings). The district must maintain the notice of the suspension during the suspension period.

Requests During Suspension Period

Notwithstanding another provision of the Public Information Act, a request for public information received by a district during a suspension period is considered to have been received by the district on the first business day after the date the suspension period ends.

Pending Requests Tolled

A request for public information received by a district before the date an initial suspension period begins are tolled until the first business day after the date the suspension period ends.

Gov't Code 552.2325(a)-(j), (l), (m)

Large or Frequent Requests

A district may establish reasonable monthly and yearly limits on the amount of time that district employees are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time. A yearly time limit may not be less than 36 hours for a requestor during the 12-month period that corresponds to a district's fiscal year. A monthly time limit may not be less than 15 hours for a requestor for a one-month period.

Annual Limits on Personnel Time

Request by Minor

In determining whether a time limit applies, any time spent complying with a request submitted in the name of a minor, as defined by Family Code 101.003(a), is to be included in the calculation of the cumulative amount of time spent complying with a request for public information by a parent, guardian, or other person who has control of the minor under a court order and with whom the minor resides, unless that parent, guardian, or other person establishes that another person submitted that request in the name of the minor.

Gov't Code 552.275(a), (b), (c)

Written Statement of Cumulative Personnel Time

If a district establishes a time limit, each time the district complies with a request for public information, the district shall provide the requestor with a written statement of the amount of personnel time spent complying with that request and the cumulative amount of time spent complying with requests for public information from that requestor during the applicable monthly or yearly period. The amount of time spent preparing the written statement may not be included in the amount of time included in the statement to the requestor unless the requestor's time limit for the period has been exceeded. *Gov't Code 552.275(d)*

Photo Identification

A district may request photo identification from a requestor for the sole purpose of establishing that the requestor has not exceeded a limit established by the district and concealed the requestor's identity.

Statement Required

A request for photo identification must include a written estimate of charges applicable to the requestor who has exceeded a limit established by the district and a statement that describes each specific reason why the request for photo identification may apply to the requestor.

Proof or Payment

The district shall accept as proof of a requestor's identification physical presentment of photo identification or an image of the photo identification that is transmitted electronically or through the mail. A requestor from whom a district has requested photo identification may decline to provide identification and obtain the requested information by paying the charge assessed in the written estimate.

Gov't Code 552.275(n)-(o)

Written Estimate of Charges Beyond Time Limit

Subject to unpaid cost estimates for large and frequent requests, as described below, if in connection with a request for public information, the cumulative amount of personnel time spent complying with requests for public information from the same requestor equals or exceeds the district-established time limit, the district shall provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses, necessary to comply with the request. The written estimate must be provided to the requestor on or before the 10th day after the date on which the public information was requested. The amount of this charge relating to the cost of locating, compiling, and producing the public information shall be established by rules prescribed by the attorney general under Government Code 552.262(a) and (b).

Additional Time

If a district provides the requestor with written notice that additional time is required to prepare the written estimate, the district must provide the written estimate as soon as practicable, but on or before the 10th day after the date the district provided the notice that additional time was required.

Gov't Code 552.275(e), (f)

Unpaid Cost Estimate

When a request is made by a requestor who has made a previous request to the district that has not been withdrawn, for which the district has located and compiled documents in response, and for which the district has issued a written estimate of charges that remains unpaid on the date the requestor submits the new request, the district is not required to locate, compile, produce, or provide copies of documents or prepare an estimate of charges in response to a new request until the date the requestor pays each unpaid statement issued in connection with a previous request or withdraws the previous request to which the statement applies.
Gov't Code 552.275(e-1)

Production Not Required Until Payment

If a district provides a requestor with a written estimate of charges or a written statement regarding photo identification and the district's time limits regarding the requestor have been exceeded, the district is not required to produce public information for inspection or duplication or to provide copies of public information in response to the requestor's request unless on or before the 10th day after the date the district provided the written estimate, the requestor submits payment of the amount stated in the written estimate or provides identification.

If the requestor fails or refuses to provide identification or submit payment, the requestor is considered to have withdrawn the request.

Gov't Code 552.275(g)-(h)

Exceptions

The provisions above concerning requests that require large amounts of employee or personnel time do not apply if the requestor is:

1. An individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:
    a. Dissemination by a news medium or communication service provider (as defined by Government Code 552.275(m)), including:
        (1) An individual who supervises or assists in gathering, preparing, and disseminating the news or information; or
        (2) An individual who is or was a journalist, scholar, or researcher employed by an institution of higher education at the time the person made the request for information; or
    b. Creation or maintenance of an abstract plant as described by Insurance Code 2501.004.
2. An elected official of the United States, this state, or a political subdivision of this state.
3. A representative of a publicly funded legal services organization that is exempt from federal income taxation under Internal Revenue Code 501(a), as amended, by being listed as an exempt entity under 501(c)(3) of that code.

Gov't Code 552.275(j)-(l)

No Inspections for Others Until Payment

A requestor who has exceeded a limit established by a district under Government Code 552.275 may not inspect public information on behalf of another requestor unless the requestor who exceeded the limit has paid each statement issued by the district under Government Code 552.175(e). *Gov't Code 552.271(e)*

Filing Suit to Challenge Attorney General's Decision

The only suit a district may file seeking to withhold information from a requestor is a suit that:

1. Is filed in a Travis County district court against the attorney general in accordance with Government Code 552.325, and
2. Seeks declaratory relief from compliance with a decision by the attorney general issued under Government Code Chapter 552, Subchapter G.

The district must bring the suit not later than the 30th calendar day after the date the district receives the attorney general's decision determining that the requested information must be disclosed to the requestor. If the district does not bring suit within that period, the district shall comply with the decision of the attorney general.

Exception for Affirmative Defenses

If the district wishes to preserve an affirmative defense for its officer for public information as provided by Government Code 552.353(b)(3), the district must file suit not later than the 10th calendar day after receipt of the attorney general's decision.

Gov't Code 552.324, .353(b)(3)

Suits Over Parent's Request

A district that seeks to withhold information from a parent who has requested public information relating to the parent's child under the Public Information Act, and that files suit as described by Government Code 552.324 to challenge a decision by the attorney general, must bring the suit not later than the 30th calendar day after the date the district receives the decision of the attorney general, unless an earlier deadline is established by the Public Information Act.

A court shall grant such a suit precedence over other pending matters to ensure prompt resolution of the subject matter of the suit. Notwithstanding any other law, a district may not appeal the decision of the court. This prohibition does not affect the right of a parent to appeal the decision. If a district does not bring suit within the period established, the district shall comply with the decision of the attorney general.

This provision does not affect the earlier deadline for purposes of Government Code 532.353(b)(3) (exception for affirmative de-

fenses, above) for a suit brought by an officer for public information.

Education Code 26.0085

Determination of Failure to Respond

If a requestor submits a written complaint to the attorney general under Government Code 552.328 that a district failed to respond to the requestor as required by Government Code 552.221, and the attorney general determines the governmental body improperly failed to respond to the requestor:

1. The attorney general shall notify the district in writing and require the district's public information officer or the officer's designee to complete open records training not later than six months after receiving the notification;

2. The district may not assess costs to the requestor for producing information in response to the request; and

3. If the district seeks to withhold information in response to the request, the district must:

   a. Request an attorney general decision not later than the fifth business day after the date the district receives the notification; and

   b. Release the requested information unless there is a compelling reason to withhold the information.

Gov't Code 552.328(a), (c)

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[1] Office of the Attorney General and the Public Information Act: https://www.texasattorneygeneral.gov/open-government/office-attorney-general-and-public-information-act

To the extent a law requiring or authorizing the publication of a notice in a newspaper by a district or its representative does not specify the manner of publication, including the number of times that the notice is required to be published and the period during which the notice is required to be published, the district shall follow Government Code Chapter 2051, Subchapter C. *Gov't Code 2051.042*

Definitions

"Governmental representative" includes an officer, employee, or agent of a district.

"Notice" means any matter, including a proclamation or advertisement, required or authorized by law to be published in a newspaper by a district or representative.

Gov't Code 2051.041

Time of Publication

A notice must be published in a newspaper issued at least one day before the occurrence of the event to which the notice refers. *Gov't Code 2051.050*

Unless notice is posted on the door of the county courthouse under Government Code 2051.048(d), a notice shall be published in at least one issue of a newspaper. *Gov't Code 2051.043*

Selection of Newspaper

A district or representative required to publish a notice in a newspaper shall, in accordance with Government Code Chapter 2051, Subchapter C, select one or more newspapers to publish the notice. *Gov't Code 2051.049*

Except as provided at Government Code 2051.0441, the newspaper in which a notice is published must:

1. Devote not less than 25 percent of its total column lineage to general interest items;
2. Be published at least once each week;
3. Be entered as second-class postal matter in the county where published; and
4. Have been published regularly and continuously for at least 12 months before the governmental entity or representative publishes notice. A weekly newspaper has been published regularly and continuously if the newspaper omits not more than two issues in the 12-month period.

Gov't Code 2051.044

Digital Newspaper

In lieu of publishing a notice in a newspaper as described above, a district may publish a notice in a digital newspaper if that digital newspaper:

1. Has an audited paid-subscriber base;
2. Has been in business for at least three years;
3. Employs staff in the jurisdiction of the district;
4. Reports on local events and governmental activities in the jurisdiction of the district;
5. Provides news of general interest to people in the jurisdiction of the district; and
6. Updates its news at least once each week.

Selection of Newspaper in Certain Counties

If a notice is to be published in: (a) a county with a population of at least 30,000 and not more than 42,000, that borders the Red River; or (b) a county that does not have a newspaper published in the county that meets the requirements at Government Code 2051.044, the newspaper in which the notice is published must:

1. Devote not less than 20 percent of its total column lineage to general interest items;
2. Be published at least once each week;
3. Be entered as a periodical postal matter in the county where published or have a mailed or delivered circulation of at least 51 percent of the residences in the county where published; and
4. Have been published regularly and continuously for at least 12 months before publication of the notice. A weekly newspaper has been published regularly and continuously if the newspaper omits not more than two issues in the 12-month period.

Gov't Code 2051.0441

Rate for Publication

A notice shall be published in a newspaper that is published in the district and that will publish the notice at or below the legal rate. The legal rate for publication of a notice in a newspaper is the newspaper's lowest published rate for classified advertising.

If no newspaper published in the district will publish the notice at or below the legal rate, the district shall publish the notice in a newspaper that is published in the county in which the district is located and will charge the legal rate or a lower rate.

If no newspaper published in the county in which the district is located will publish the notice at or below the legal rate, the district shall post the notice at the door of the county courthouse of the county in which the district is located.

Gov't Code 2051.045, .048

United States Constitution

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

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

Texas Constitution

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

Federal Laws

Section 504

A district that receives federal financial assistance, directly or indirectly, and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973. *29 U.S.C. 794; 34 C.F.R. 104.7(b)*

Americans with Disabilities Act

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

District Grievance Policy

The board shall adopt a grievance policy to address grievances received by the district. *Education Code 26A.001(a)*

Levels of Review

The policy must provide for the following levels of review, except as provided below:

1. Review by the principal of the district campus at which the grievance is filed or the principal's designee or, for a grievance that arises from subject matter unrelated to a campus, an administrator at the school district's central office;
2. If established by the policy, an appeal to an administrator at the school district's central office;
3. An appeal to the superintendent of the school district or the superintendent's designee; and

4. An appeal to the board of trustees of the school district.

A review or appeal on a grievance must be conducted by a person with the authority to address the grievance unless a preliminary hearing is necessary to develop a record or a recommendation for the board of trustees of the school district.

Education Code 26A.001(b), (c)

General Requirements

The policy must:

1. Prohibit the board or a district employee from retaliating against a student or parent of a student who files a grievance in accordance with the policy;
2. Require a person involved in reviewing a grievance under the policy to recuse himself or herself from reviewing the grievance if the person is the subject of the grievance;
3. Provide for a higher level of review if the person who would otherwise review the grievance is required to recuse himself or herself;
4. Provide for the creation and retention of a record of each hearing on the grievance, including documents submitted by the person who filed the grievance or determined relevant by school district personnel and a written record of the decision, including an explanation of the basis for the decision and an indication of each document that supports the decision;
5. Allow the person who filed the grievance to supplement the record with additional documents or add additional claims;
6. Allow for a member of the board to file a grievance with the district, but prohibit the member from voting on matters related to that grievance;
7. Allow for a remand to a lower level of review to develop a record at any time, including at the board level of review;
8. Require the district to direct a grievance that is filed with the incorrect administrator to the appropriate administrator and consider the grievance filed on the date on which the grievance was initially filed;
9. Require the district to issue a decision on the merits of the concern raised in the grievance, notwithstanding procedural errors or the type of relief requested;
10. Unless otherwise required by law, allow for a hearing or meeting at which the grievance will be discussed to be open or

closed at the request of the person who filed the grievance; and

11. For a grievance before the board, require that the person who filed the grievance be provided at least five business days before the date on which the meeting to discuss the grievance will be held a description of any information the board of trustees intends to rely on that is not contained in the record; and

12. For a grievance before the board, require the meeting at which the grievance is discussed be recorded by video or audio recording or by transcript created by a certified court reporter.

Education Code 26A.001(e)

Deadlines

Appeal

The policy must provide at least 20 days to file an appeal after the date on which a decision on the grievance was made.

Hearings

For a hearing that is not before the board of trustees of the school district, the policy must require:

1. The district to hold a hearing not later than the 10th day after the date on which the grievance or appeal was filed; and

2. A written decision to be made not later than the 20th day after the date on which the hearing was held that includes any relief or redress to be provided and information regarding filing an appeal, including the timeline to appeal under this provision and Education Code 7.057, if applicable; and

3. For a hearing before the board, the policy must require the board to:

   a. Hold a meeting to discuss the grievance not later than the 60th day after the date on which the previous decision on the grievance was made; and

   b. Make a decision on the grievance not later than the 30th day after the date on which the meeting is held.

Education Code 26A.002

Report

Each school district shall annually submit a report on grievances filed in the district during the preceding year. *Education Code 26A.001(g)* [See FNG]

Posting of Procedures and Forms

The district's internet website and student handbook must include procedures for resolving grievances, standardized forms for filing a grievance, and a method for filing a grievance electronically. *Education Code 26A.003* [See FNG]

Closed Meeting

A board may conduct a closed meeting on a public complaint to the extent required or provided by law. [See BEC]

Record of Proceedings

An appeal of a board's decision to the commissioner of education shall be decided based on a review of the record developed at the district level. "Record" includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

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

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

19 TAC 157.1073(d)

Note: Public complaints regarding instructional and library materials are addressed at EFA and EFB, respectively, and complaints against peace officers are addressed at CKE.

Complaints

In this policy, the terms “complaint” and “grievance” shall have the same meaning.

Other Complaint Processes

Complaints by members of the public shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with GF after the relevant complaint process:

1. Complaints concerning instructional resources shall be submitted in accordance with the EF series.
2. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with the CKE series.

Complaints regarding refusal of entry to or ejection from District property based on Education Code 37.105 shall be filed in accordance with this policy. However, the timelines shall be adjusted as necessary to permit the complainant to address the Board in person within 90 calendar days of filing the initial complaint, unless the complaint is resolved before the Board considers it. [See GKA(LEGAL)]

Informal Process

The Board encourages the public to discuss concerns with an appropriate administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

Filing Deadlines

If a member of the public has engaged in the informal process in an attempt to resolve the complaint with the District and has not reached a resolution during the process, the individual must file a complaint within 15 business days of the date the individual first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance.

Deadline Extensions

All deadlines shall be strictly followed unless otherwise required by law or modified by mutual written consent.

Formal Process

An individual may initiate the formal process described below by timely filing a written complaint form.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or “mini-trial” at any level.

The complaint form shall be filed with the lowest level administrator who has the authority to remedy the alleged problem. In most circumstances, the individual shall file a Level One complaint with the

campus principal for any complaint on a matter related to a campus. For a complaint that arises on a matter that is unrelated to a campus, the complaint shall be filed with the appropriate District-level administrator.

If the subject matter of the complaint requires a Board decision, is a complaint about a Board member, or is a complaint about the Superintendent, the complaint shall be initiated at the Board level. A preliminary hearing to develop a record or recommendation for the Board may be conducted by an appropriate administrator.

A Board member shall be permitted to file a complaint under this policy, but, if the complaint is considered by the Board or Board committee, the Board member shall be prohibited from voting on the Board's or Board committee's decision.

If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

Option to Continue Informal Process

Even after initiating the formal complaint process, the complainant is encouraged to seek informal resolution of their concerns. A complainant whose concerns are resolved may withdraw a formal complaint at any time.

Notice of Complaint

A District employee against whom a complaint has been filed shall be provided notice of the complaint in accordance with administrative regulations. The employee shall have sufficient opportunity to submit a written response to the complaint that shall be included in the record of the complaint.

Freedom from Retaliation

Neither the Board nor any District employee shall unlawfully retaliate against any individual for bringing a concern or complaint.

General Provisions

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, or by U.S. Mail. Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on the deadline. Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are postmarked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three business days after the deadline.

Scheduling Hearings

The District shall make reasonable attempts to schedule hearings at a mutually agreeable time. If the complainant fails to appear at a

scheduled hearing, the District may hold the hearing and issue a decision in the complainant's absence.

Decision

A "decision" shall mean a written communication to the complainant from the appropriate administrator that provides an explanation of the basis of the decision, an indication of each document that supports the decision, and any relief or redress to be provided. A decision shall be issued on the merits of the concern raised in the complaint notwithstanding any procedural errors or the type of relief or redress requested.

The decision shall also include information regarding the filing of an appeal in accordance with this policy. After a hearing at Level Three, the decision shall include information on submitting an appeal to the commissioner.

A decision may be hand-delivered, sent by electronic communication to the complainant's email address of record, or sent by U.S. Mail to the complainant's mailing address of record. Mailed decisions shall be timely if they are postmarked by U.S. Mail on or before the deadline.

Representative

"Representative" shall mean any person who or organization that is designated by a complainant to represent the complainant in the complaint process.

The complainant may designate a representative through written notice to the District at any level of this process. The representative may participate in person or by telephone conference call. If the complainant designates a representative with fewer than three business days' notice to the District before a scheduled hearing, the District may reschedule the hearing to a later date, if desired, in order to include the District's counsel. The District may be represented by counsel at any level of the process.

Consolidating Complaints

To promote efficiency in addressing complaints, the appropriate administrator shall determine if separate or serial complaints arising from an event or series of related events shall be consolidated.

Costs Incurred

Each party shall pay its own costs incurred in the course of the complaint.

Complaint and Appeal Forms

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

Copies of any documents that support the complaint should be included with the complaint form. If the complainant does not have copies of these documents, copies may be presented at the Level One hearing. After the Level One hearing, the complainant may supplement the record with additional documents or include additional claims.

Record

A record of each complaint hearing shall be created and retained in accordance with this policy. The record shall include documents submitted by the complainant, documents determined relevant by District personnel, and the decision.

Remand

A complaint or appeal form that is incomplete in any material aspect shall be refiled, if at Level One, and remanded at all other levels in order to develop an adequate record of the complaint.

If an adequate record has not been developed, the appropriate administrator may remand the complaint to a lower level. The Board or Board committee may remand a complaint to a lower level if at the Board level of review an adequate record has not been developed.

Assignment of Hearing Officer

When a District employee is the subject of a complaint, the hearing shall be conducted by an administrator who is in a supervisory or higher organizational role. The District employee who is the subject of the complaint shall recuse themselves from reviewing the complaint at any level in the process.

Investigation

The District may conduct an investigation at any level in the complaint process. If the District and the complainant mutually agree, all deadlines shall be suspended during an investigation.

Complaint Levels

Level One

At Level One, the appropriate hearing officer shall hold a hearing with the complainant within 10 calendar days after receipt of the written complaint. The hearing officer may set reasonable time limits for the hearing.

The hearing officer shall provide the complainant a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider information provided with the complaint form and any other relevant documents or information the hearing officer believes will help resolve the complaint.

Level Two

If the complainant did not receive the relief requested at Level One or if the time for a decision has expired, the complainant may request a hearing at Level Two to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within 20 calendar days of the date of the Level One decision or, if no decision has been communicated to the complainant, within 20 calendar days of the Level One decision deadline.

After receiving notice of the appeal, the Level One hearing officer shall prepare and forward a record of the Level One complaint to the Level Two hearing officer and provide a copy of the Level One record to the complainant.

The Level One record shall include:

1. The original complaint form and any attachments.
2. Any other documents submitted by the complainant at Level One.
3. If the complaint is against a District employee, the written response of the District employee, if any.
4. The decision issued at Level One and any attachments.
5. All other documents relied upon by the Level One hearing officer in reaching the Level One decision.

The hearing officer shall hold a hearing within 10 calendar days after the appeal notice is filed. The hearing officer may set reasonable time limits for the hearing.

The hearing officer shall provide the complainant a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider the Level One record, any additional information provided prior to the Level Two hearting, and any other relevant documents or information the hearing officer believes will help resolve the complaint.

Recordings of the Level One and Level Two hearings, if any, shall be maintained with the Level One and Level Two records.

Level Three

If the complainant did not receive the relief requested at Level Two or if the time for a decision has expired, he or she may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within 20 calendar days of the date of the Level Two decision or, if no decision has been communicated to the complainant, within 20 calendar days of the Level Two decision deadline.

Unless the Board delegates a committee in accordance with law, the Board shall hear the appeal of the Level Two decision.

After receiving notice of the appeal, the Board or Board committee shall hold a meeting to discuss the complaint no later than 60 calendar days after the date on which the Level Two decision was made.

The Superintendent shall inform the complainant whether the Board or a Board committee will hear the appeal and of the date, time, and place of the meeting at which the complaint will be on the agenda for presentation to the Board or Board committee.

At least five business days before the Board or Board committee meeting, the Superintendent shall provide the complainant a description of any information the Board intends to rely on that is not contained in the record created at the previous hearing levels, including any preliminary hearing.

The Superintendent shall provide the Board the record of the Level Two appeal. The complainant may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The notice of appeal from Level One to Level Two.
3. Any other documents submitted by the complainant at Level Two.
4. The decision issued at Level Two and any attachments.
5. All other documents relied upon by the administration in reaching the Level Two decision.

The complainant may request that the complaint be heard in open or closed meeting. The District shall honor that request unless the Texas Open Meetings Act or other applicable law requires otherwise. [See BE]

At the meeting, the presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the complainant and administration to each make a presentation and provide rebuttal and an opportunity for questioning by Board members.

In addition to any other record of the meeting required by law, the Board or Board committee shall prepare a separate record of the Level Three presentation. The Level Three presentation, including the presentation by the complainant or the complainant's representative, any presentation from the administration, and questions from Board members with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board or Board committee shall then consider the complaint. It shall make a decision no later than 30 calendar days after the date of the Board or Board committee meeting at which the complaint was presented. The complainant shall be provided a decision in accordance with this policy and state law.

Table of Contents

Applicability of Criminal Laws 2
Trespass 2
Refusal of Entry or Ejection of Unauthorized Persons 2
Vehicles on School Property 3
Disruption of Lawful Assembly 3
Free Speech 4
Disruption of Classes 4
Disruption of Transportation 5
Tobacco and E-Cigarettes 5
Smoking in Buildings 5
Alcohol 5
Intoxicants 5
Fireworks 6
Federal Gun-Free School Zones Act 6
Possession of Weapons 7
"Premises" Defined 7
Notice to Public 7
Transportation or Storage of Firearm in School Parking Area 8
Volunteer Emergency Services Personnel 8
Exhibition of Firearm 9
Trespass — Concealed Carry of Handgun 9
Notice / Sign — Concealed Carry of Handgun 9
Exception 10
Unauthorized Notice 10
Trespass — Open Carry of Handgun 10
Notice / Sign — Open Carry of Handgun 10
Exception 11
Unmanned Aircraft Systems 11
Federal Law 11
State Law 13

Applicability of Criminal Laws

The criminal laws of the state apply to the areas under the control and jurisdiction of the board. *Education Code 37.101*

Trespass

An unauthorized person who trespasses on the grounds of a school district commits a Class C misdemeanor. *Education Code 37.107*

Refusal of Entry or Ejection of Unauthorized Persons

A school administrator, school resource officer, or school district peace officer may refuse to allow persons to enter on or may eject a person from property under the district's control if the person refuses to leave peaceably on request and:

1. The person poses a substantial risk of harm to any person; or
2. The person behaves in a manner that is inappropriate for a school setting and, except as provided below:
    a. The administrator, resource officer, or peace officer issues a verbal warning to the person that the person's behavior is inappropriate and may result in the person's refusal of entry or ejection; and
    b. The person persists in that behavior.

The verbal warning and person’s persistence in the behavior described at item 2 are not required for a person serving as a referee, judge, or other official of an extracurricular athletic activity or competition sponsored or sanctioned by the school district or the University Interscholastic League to eject a spectator from the extracurricular athletic activity or competition.

Identification may be required of any person on property under the district’s control.

A district shall maintain a record of each verbal warning issued, including the name of the person to whom the warning was issued and the date of issuance.

At the time a person is refused entry to or ejected from a school district's property, the district shall provide to the person written information explaining the appeal process.

If a parent or guardian of a child enrolled in a school district is refused entry to the district’s property, the district shall accommodate the parent or guardian to ensure that the parent or guardian may participate in the child’s admission, review, and dismissal committee or in the child’s team established under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), in accordance with federal law.

The term of a person's refusal of entry to or ejection from a school district's property under this section may not exceed two years.

A district shall post on the district's website and each district campus shall post on any campus website a notice regarding these provisions, including the appeal process.

The board shall adopt a policy that uses the district's existing grievance process [see FNG, GF] to permit a person refused entry to or ejected from property controlled by the district to appeal such refusal of entry or ejection. The policy must permit a person appealing under this section to address the board in person within 90 days of the commencement of the appeal, unless the appeal is granted before the board considers the appeal.

The board's decision to grant or deny an appeal under this section is final and may only be further appealed under the applicable provisions of Education Code 7.057.

Education Code 37.105; 19 TAC 103.1207

[For information on visitor requirements, including requesting identification, see GKC.]

Vehicles on School Property

A board may bar or suspend a person from driving or parking a vehicle on any school property as a result of the person's violation of any rule or regulation promulgated by the board or set forth in Education Code Chapter 37, Subchapter D. [See CLC] *Education Code 37.106*

Disruption of Lawful Assembly

A person commits a Class B misdemeanor if the person, alone or in concert with others, intentionally engages in disruptive activity on the campus or property of a public school.

Disruptive activity means:

1. Obstructing or restraining the passage of persons in an exit, entrance, or hallway of any building without the authorization of the administration of the school;

2. Seizing control of any building or portion of a building to interfere with any administrative, educational, research, or other authorized activity;

3. Preventing or attempting to prevent by force or violence or the threat of violence any lawful assembly authorized by the school administration so that a person attempting to participate in the assembly is unable to participate due to the use of force or violence or due to a reasonable fear that force or violence is likely to occur;

4. Disrupting by force or violence or the threat of force or violence a lawful assembly in progress; or

5. Obstructing or restraining the passage of any person at an exit or entrance to the campus or property or preventing or attempting to prevent by force or violence or by threats thereof the ingress or egress of any person to or from the property or campus without the authorization of the administration of the school.

Free Speech

This provision shall not be construed to infringe upon any right of free speech or expression guaranteed by the constitutions of the United States or the state of Texas.

Education Code 37.123

Disruption of Classes

A person, other than a primary or secondary grade student enrolled in the school, commits a Class C misdemeanor if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities. It is an exception to the application of the offense that, at the time the person engaged in the prohibited conduct, the person was younger than 12 years of age.

Disrupting the conduct of classes or other school activities includes:

1. Emitting noise of an intensity that prevents or hinders classroom instruction.

2. Enticing or attempting to entice a student away from a class or other school activity that the student is required to attend.

3. Preventing or attempting to prevent a student from attending a class or other school activity that the student is required to attend.

4. Entering a classroom without the consent of either the principal or the teacher and, through either acts of misconduct or use of loud or profane language, disrupting class activities.

“School property” includes a public school campus or school grounds on which a public school is located, and any grounds or buildings used by a school for an assembly or other school-sponsored activity.

“Public property” includes a street, highway, alley, public park, or sidewalk.

Education Code 37.124

Disruption of Transportation

A person, other than a primary or secondary grade student, commits a Class C misdemeanor if the person intentionally disrupts, prevents, or interferes with the lawful transportation of students to and from school, or to or from activities sponsored by a school, on a vehicle owned and/or operated by a district. It is an exception to the application of the offense that, at the time the person engaged in the prohibited conduct, the person was younger than 12 years of age. *Education Code 37.126*

Tobacco and E-Cigarettes

A board shall prohibit smoking or using e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property. School personnel shall enforce these policies on school property. *Education Code 38.006* [See FNCD for the definition of e-cigarette.]

Smoking in Buildings

A district shall not permit smoking within any indoor facility used for provision of routine or regular kindergarten, elementary, or secondary education or library services to children; or regular or routine health care or day care or early childhood development (Head Start) services to children or for the use of employees who provide such services. *20 U.S.C. 6083; 20 U.S.C. 7183*

Criminal Penalty

A person commits an offense if the person is in possession of a burning tobacco product, smokes tobacco, or operates an e-cigarette in a facility of a public school.

Defense

It is a defense to prosecution that a district does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such place and that an offense is punishable by a fine not to exceed $500.

Facilities for Extinguishment

A district shall be equipped with facilities for extinguishment of smoking materials.

Penal Code 48.01(a)-(c)

Alcohol

A board shall prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property. *Education Code 38.007(a)* [See FNCF regarding alcohol-free zones.]

Intoxicants

A person commits a Class C misdemeanor if the person possesses an intoxicating beverage for consumption, sale, or distribution while:

1. On the grounds or in a building of a public school; or
2. Entering or inside any enclosure, field, or stadium where any athletic event sponsored or participated in by a public school is being held.

Education Code 37.122 [See also FNCF]

Fireworks

A person may not explode or ignite fireworks within 600 feet of any school unless the person receives authorization in writing from the school. *Occupations Code 2154.251(a)(1)*

Federal Gun-Free School Zones Act

It is unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

"School zone" means in, or on the grounds of, a school; or within a distance of 1,000 feet from the grounds of a school.

This prohibition does not apply to the possession of a firearm:

1. On private property not part of school grounds;
2. If the individual possessing the firearm is licensed to do so by the state, and the law of the state requires that, before an individual obtains such a license, the law enforcement authorities of the state verify that the individual is qualified under law to receive the license;
3. That is not loaded and in a locked container, or a locked firearms rack that is on a motor vehicle;
4. By an individual for use in a program approved by a school in the school zone;
5. By an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
6. By a law enforcement officer acting in his or her official capacity; or
7. That is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

It is unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm at a place that the person knows is a school zone.

This prohibition does not apply to the discharge of a firearm:

1. On private property not part of school grounds;
2. As part of a program approved by a school in the school zone, by an individual who is participating in the program;

3. By an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

4. By a law enforcement officer acting in his or her official capacity.

18 U.S.C. 921(a)(25), .922(q)

Possession of Weapons

Unless entitled to a defense or otherwise excepted by Penal Code 46.15, a person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon [see FNCG]:

1. On the premises of a school, on any grounds or building owned by and under the control of a school and on which an activity sponsored by the school is being conducted, or in a passenger transportation vehicle of a school, unless pursuant to written regulations or written authorization of the school;

2. On the premises of a polling place on the day of an election or while early voting is in progress;

3. On the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a firearm, location-restricted knife, club, or prohibited weapon is used in the event;

4. In the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to the OMA, and the entity provided required notice of the meeting.

It is not a defense to prosecution that the person possessed a handgun and was licensed to carry a handgun.

Penal Code 46.03(a)(1), (2), (8), (14), (f)

“Premises” Defined

“Premises,” for purposes of this policy, means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. *Penal Code 46.03(c)(4)*

Notice to Public

A district may provide notice that firearms and other weapons are prohibited under Penal Code 46.03 on the premises or other property, as applicable, by posting a sign at each entrance to the premises or other property that:

1. Includes language that is identical to or substantially similar to the following: “Pursuant to Section 46.03, Penal Code (places

weapons prohibited), a person may not carry a firearm or other weapon on this property";

2. Includes the language described above in both English and Spanish;

3. Appears in contrasting colors with block letters at least one inch in height; and

4. Is displayed in a conspicuous manner clearly visible to the public.

Without a sign described above posted prominently at each entrance to the premises or other property, as applicable, a person can assert a defense to prosecution for unlawfully carrying a handgun if the person personally received notice that carrying a firearm was prohibited and promptly departed from the premises or other property.

Penal Code 46.15(m)-(o)

Transportation or Storage of Firearm in School Parking Area

A district may not prohibit a person who holds a license to carry a handgun under Government Code, Chapter 411, Subchapter H, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the district, and may not regulate the manner in which the handgun, firearm, or ammunition is stored in the vehicle, provided that the handgun, firearm, or ammunition is not in plain view.

This does not authorize a person to possess, transport, or store a handgun, a firearm, or ammunition in violation of Education Code 37.125, Penal Code 46.03, or other law.

Education Code 37.0815

Volunteer Emergency Services Personnel

A district is not liable in a civil action arising from the discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun under Government Code, Chapter 411, Subchapter H.

The discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun under Subchapter H, Chapter 411, Government Code, is outside the course and scope of the individual's duties as volunteer emergency services personnel.

The district does not waive immunity from suit or liability under the Texas Tort Claims Act or any other law.

"Volunteer emergency services personnel" includes a volunteer firefighter, an emergency medical services volunteer as defined by Health and Safety Code 773.003, and any individual who, as a volunteer, provides services for the benefit of the general public during emergency situations. The term does not include a peace officer or reserve law enforcement officer, as those terms are defined by Occupations Code 1701.001, who is performing law enforcement duties.

Civ. Prac. & Rem. Code 112.001; Penal Code 46.01(18)

Exhibition of Firearm

A person commits a third degree felony if, in a manner intended to cause alarm or personal injury to another person or to damage school property, the person intentionally:

1. Exhibits or uses a firearm:
    a. In or on any property, including a parking lot, parking garage, or other parking area, that is owned by a private or public school; or
    b. On a school bus being used to transport children to and from school-sponsored activities;
2. Threatens to exhibit or use a firearm in or on property described above or on a bus and was in possession of or had immediate access to the firearm.

A person commits a Class A misdemeanor if the person threatens to exhibit or use a firearm, but was not in possession of or did not have immediate access to the firearm.

Education Code 37.125

Trespass — Concealed Carry of Handgun

A license holder commits an offense if the license holder:

1. Carries a concealed handgun on the property of another without effective consent; and
2. Received notice that entry on the property by a license holder with a concealed handgun was forbidden.

An offense under Penal Code 30.06 is a Class C misdemeanor, except that the offense is a Class A misdemeanor if, after entering the property, the license holder was personally given the notice that entry or remaining on the property with a concealed handgun was forbidden and subsequently failed to depart.

Notice / Sign — Concealed Carry of Handgun

For purposes of Penal Code 30.06, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

"Written communication" means:

1. A card or other document on which is written language identical to the following: "Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun"; or

2. A sign posted on the property that includes the language described above in both English and Spanish, appears in contrasting colors with block letters at least one inch in height, and is displayed in a conspicuous manner clearly visible to the public.

Exception

It is an exception to Penal Code 30.06 that the property on which the license holder carries a concealed handgun is owned or leased by a district and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Penal Code 46.03.

Penal Code 30.06 [See also FNCG]

Unauthorized Notice

A district may not take any action, including an action consisting of the provision of notice, by a communication described by Penal Code 30.06 or 30.07 that states or implies that a license holder who is carrying a handgun under the authority of Government Code Chapter 411 is prohibited from entering or remaining on a premises or other place owned or leased by the district unless license holders are prohibited from carrying a handgun on the premises or other place by Penal Code 46.03 or other law. *Gov't Code 411.209*

Trespass — Open Carry of Handgun

A holder of a license to openly carry a handgun commits an offense if the license holder:

1. Openly carries a handgun on property of another without effective consent; and

2. Received notice that entry on the property by a license holder openly carrying a handgun was forbidden.

Notice / Sign — Open Carry of Handgun

For purposes of Penal Code 30.07, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

"Written communication means":

1. A card or other document on which is written language identical to the following: "Pursuant to Section 30.07, Penal Code

(trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly"; or

2. A sign posted on the property that includes the language described above in both English and Spanish, appears in contrasting colors with block letters at least one inch in height, and is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

An offense under Penal Code 30.07 is a Class C misdemeanor, except that the offense is a Class A misdemeanor if, after entering the property, the license holder was personally given the notice by oral communication that entry or remaining on the property with an openly carried handgun was forbidden and subsequently failed to depart.

Exception

It is an exception to Penal Code 30.07 that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Penal Code 46.03.

Penal Code 30.07

Unmanned Aircraft Systems

Note: For provisions applicable to the use of drones for law enforcement purposes, see CKEA

Federal Law

The U.S. Government has exclusive sovereignty of airspace of the United States. *49 U.S.C. 40103*

Small Unmanned Aircraft

"Small unmanned aircraft" means an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.

Small Unmanned Aircraft System

"Small unmanned aircraft system" (small UAS) means a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the national airspace system.

14 C.F.R. 1.1, 107.3

Operation of Small UAS

The registration, airman certification, and operation of civil small UAS within the United States is subject to 14 C.F.R. Part 107. Part 107 does not apply to the following:

1. Air carrier operations;

2. Any aircraft subject to the provisions of 49 U.S.C. 44809;

3. Any operation that the holder of an exemption under section 333 of Public Law 112-95 or 49 U.S.C. 44807 elects to conduct pursuant to the exemption, unless otherwise specified in the exemption; or

4. Any operation that a person elects to conduct under 14 C.F.R. Part 91 with a small UAS that has been issued an airworthiness certificate.

14 C.F.R. 107.1

Exception for Limited Recreational Operation

A person may operate a small unmanned aircraft without specific certification or operating authority from the Federal Aviation Administration (FAA) if the operation adheres to all of the following limitations:

1. The aircraft is flown strictly for recreational purposes.

2. The aircraft is operated in accordance with or within the programming of a community-based organization's set of safety guidelines that are developed in coordination with the FAA.

3. The aircraft is flown within the visual line of sight of the person operating the aircraft or a visual observer co-located and in direct communication with the operator.

4. The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft.

5. In Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport, the operator obtains prior authorization from the administrator of the FAA or designee before operating and complies with all airspace restrictions and prohibitions.

6. In Class G airspace, the aircraft is flown from the surface to not more than 400 feet above ground level and complies with all airspace restrictions and prohibitions.

7. The operator has passed an aeronautical knowledge and safety test and maintains proof of test passage to be made available to the FAA or law enforcement upon request.

8. The aircraft is registered and marked in accordance with 49 U.S.C. Chapter 441 and proof of registration is made available to the FAA or law enforcement upon request.

49 U.S.C. 44809(a)

State Law

Regulation Limited

A political subdivision, including a school district, may not adopt or enforce any ordinance, order, or other similar measure regarding the operation of an unmanned aircraft. An ordinance, order, or other similar measure that violates this provision is void and unenforceable. *Gov't Code 423.009(b), (d)*

Exception

A political subdivision may adopt and enforce an ordinance, order, or other similar measure regarding:

1. The use of an unmanned aircraft during a special event;
2. The political subdivision's use of an unmanned aircraft; or
3. The use of an unmanned aircraft near a facility or infrastructure owned by the political subdivision, if the political subdivision:
    a. Applies for and receives authorization from the Federal Aviation Administration to adopt the regulation; and
    b. After providing reasonable notice, holds a public hearing on the political subdivision's intent to apply for the authorization.

"Special event" means a festival, celebration, or other gathering that involves the reservation and temporary use of all or a portion of a public park, road, or other property of a political subdivision; and entertainment, the sale of merchandise, food, or beverages, or mass participation in a sports event; and requires a significant use or coordination of a political subdivision's services.

Gov't Code 423.009(a)(2), (c)

Privacy Law

It is lawful to capture an image using an unmanned aircraft in this state for the reasons listed in Government Code 423.002, including:

1. With the consent of the individual who owns or lawfully occupies the real property captured in the image; or
2. From a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception.

Gov't Code 423.002(a)

Access to District Property

Authorized District officials, including school resource officers and District police officers if applicable, may refuse to allow a person access to property under the District's control in accordance with law.

District officials may request assistance from law enforcement in an emergency or when a person is engaging in behavior rising to the level of criminal conduct.

Ejection or Exclusion under Education Code 37.105

In accordance with Education Code 37.105, a District official shall provide a person refused entry to or ejected from property under the District's control written information explaining the right to appeal such refusal of entry or ejection under the District's grievance process.

A person appealing under the District's grievance process shall be permitted to address the Board in person within 90 calendar days of filing the initial complaint, unless the complaint is resolved before the Board considers it. [See FNG and GF]

Off-Campus Activities

Employees shall be designated to ensure appropriate conduct of participants and others attending a school-related activity at non-District or out-of-District facilities. Those so designated shall coordinate their efforts with persons in charge of the facilities.

Prohibitions

Tobacco and E-Cigarettes

The District prohibits smoking and the use of tobacco products, e-cigarettes, or other electronic vaporizing devices on District property, in District vehicles, or at school-related activities.

Weapons

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

Exceptions

No violation of this policy occurs when:

1. An individual 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, as long as the handgun or other firearm is not in plain view; or
2. 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]

Regional education service centers shall be located throughout the state so that each school district has the opportunity to be served by and to participate in an approved center on a voluntary basis. The centers shall provide services to assist school districts in improving student performance and increasing the efficiency and effectiveness of school operations. *Education Code 8.001(b), .002*

Core Services

Each service center shall develop and maintain core services for purchase by school districts and campuses. These services are:

1. Training and assistance in teaching each subject area assessed under Education Code 39.023 (state assessments) and providing instruction in personal financial literacy as required under Education Code 28.0021.
2. Training and assistance in providing each program that qualifies for a funding allotment under Education Codes 48.102 (special education), 48.1021 (special education service group), 48.103 (dyslexia), 48.104 (compensatory education), 48.105 (bilingual education), or 48.109 (gifted and talented).
3. Assistance specifically designed for a district or campus assigned an unacceptable performance rating under Education Code 39.054.
4. Training and assistance to teachers, administrators, school board members, and members of site-based decision-making committees.
5. Assistance specifically designed for a school district that is considered out of compliance with state or federal special education requirements.
6. Assistance in complying with state laws and rules.

Education Code 8.051(d)

Additional Services

In addition to the core services, a regional education service center may offer any service requested and purchased by any school district or campus in the state. *Education Code 8.053*

A regional education service center shall assist the board of a district in entering into an agreement with another district or political subdivision, a regional education service center, or an institution of higher education for a cooperative shared services arrangement regarding administrative services, including transportation, food service, purchasing, and payroll functions. *Education Code 11.003(c)*

Delegation of Functions

The board of a school district may delegate purchasing or other administrative functions to a service center to the extent necessary to achieve efficiencies in the use of available services. *Education Code 8.122(d)*

Notices to Law Enforcement Agencies

A principal or designee shall notify local law enforcement if the principal has reasonable grounds to believe that any of the following activities occurred in school, on school property, or at a school-sponsored or school-related activity on or off school property, without regard to whether the activity is investigated by school security officers:

1. Conduct that may constitute an offense listed in Government Code 508.149; deadly conduct, as described by Penal Code 22.05; or a terroristic threat, as described by Penal Code 22.07.
2. The use, sale, or possession of a controlled substance, drug paraphernalia, or marijuana, as defined by Health and Safety Code 481.
3. The possession of any of the weapons or devices listed in Penal Code 46.01(1)–(3), (5)–(7), (9)–(14), or (16). [See FNCG]
4. The possession of a weapon as defined by 18 U.S.C. Section 921, in accordance with the Gun-Free Schools Act. [See FOD]
5. Conduct that may constitute a criminal offense under Penal Code 71.02, Engaging in Organized Criminal Activity.
6. Conduct that may constitute a criminal offense for which a student may be expelled under Education Code 37.007(a) or (e).

Notice is not required if the principal reasonably believes that the activity does not constitute a criminal offense.

The principal or designee shall provide the notice to the district police department (if one exists) and the police department of the municipality in which the school is located. If the school is not in a municipality, the principal or designee shall provide the notice to the sheriff of the county in which the school is located. The report shall include the name and address of each student the person believes may have participated in the activity.

Notice to Employees

The principal or designee shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.

Education Code 37.015, .007(e)

Report of Conduct Constituting Assault or Harassment

A principal or designee may make a report to any school district police department or the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if, after an in-

vestigation is completed, the principal has reasonable grounds to believe that a student engaged in conduct that constitutes assault under Penal Code 22.01 or harassment with electronic communications under Penal Code 42.07(a)(7).

A person who makes a report may include the name and address of each student the person believes may have participated in the conduct.

Designee

The principal may designate a school employee, other than a school counselor, who is under the supervision of the principal to make the report.

Immunity

A person who voluntarily makes a report is immune from civil or criminal liability. A person who takes any action under this provision is immune from civil or criminal liability or disciplinary action resulting from that action.

This provision does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action.

District employees and volunteers are immune from suit resulting from an act under this provision, including an act under related policies and procedures.

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

Education Code 37.0151

Notices from Law Enforcement Agencies

As described below, representatives of the juvenile justice system shall provide notice to a district when:

1. A student is arrested or referred to the juvenile board [see Arrest, below];
2. A student is convicted, or receives deferred prosecution or deferred adjudication [see Conviction or Adjudication, below];
3. A student was removed to a disciplinary alternative education program (DAEP) and the criminal case against the student is refused or the student is found not guilty [see Not Guilty/Charges Dropped, below]; or

4. A student on parole, probation, or community supervision transfers into or reenrolls in a district [see Transfer Students, below].

Code of Criminal Procedure 15.27(a), (b), (c), (g)

Local law enforcement shall provide notice to the superintendent if a registered sex offender intends to reside in the district, as set out below. *Code of Criminal Procedure 62.053(e), .053(f)* [See Registered Sex Offenders, below]

A law enforcement agency that receives a report that a child under 11 years of age is missing shall immediately notify each school that the child attended or in which the child was enrolled that the child is missing. *Code of Criminal Procedure 63.020* [See Missing Children, below]

Reportable Offenses

Code of Criminal Procedure 15.27 applies to the following offenses:

1. Any felony offense; and
2. The following misdemeanors:
    a. An offense under Penal Code 20.02 (Unlawful Restraint), 21.08 (Indecent Exposure), 22.01 (Assault), 22.05 (Deadly Conduct), 22.07 (Terroristic Threat), or 71.02 (Engaging in Organized Criminal Activity);
    b. The unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marijuana, as defined by Health and Safety Code Chapter 481; and
    c. The unlawful possession of any of the weapons or devices listed in Penal Code 46.01(1)–(3), (5)–(7), (9)–(14), or (16), or a weapon listed as a prohibited weapon under Penal Code 46.05.

Code of Criminal Procedure 15.27(h)

Contents of Notice

Oral or written notice under Code of Criminal Procedure 15.27 must include all pertinent details of the offense or conduct, including details of any:

1. Assaultive behavior or other violence;
2. Weapons used in the commission of the offense or conduct; or
3. Weapons possessed during the commission of the offense or conduct.

Threat Assessment and Safety Plan

In addition to the information above, the law enforcement agency shall provide information relating to the student that is requested for the purpose of conducting a threat assessment or preparing a safety plan relating to that student. A school board may enter into a memorandum of understanding with a law enforcement agency regarding the exchange of information relevant to conducting a threat assessment or preparing a safety plan. Absent a memorandum of understanding, the information requested by the superintendent or the superintendent's designee shall be considered relevant.

Code of Criminal Procedure 15.27(k), (k-1)

Law enforcement records concerning a child may be inspected or copied by the superintendent of a public school where the child is enrolled only for the purpose of conducting a threat assessment or preparing a safety plan related to the child. *Family Code 58.008(d), (d-1)*

Electronic Notice

A person may substitute electronic notice for oral notice where oral notice is required by Code of Criminal Procedure 15.27. If electronic notice is used, any written notice required by article 15.27 is not required. *Code of Criminal Procedure 15.27(i)*

Arrest

Oral Notice

If a law enforcement agency arrests a person or refers a child to the juvenile board for an offense specified at Reportable Offenses, and the agency believes the person is enrolled as a student in a public school, the head of the agency or designee shall orally notify the superintendent or designee in the district in which the student is enrolled, or believed to be enrolled, of the arrest or referral. The notice shall be provided within 24 hours after the arrest or referral is made or before the next school day, whichever is earlier.

Written Notice

Within seven days after oral notice is given, the head of the law enforcement agency or designee shall mail written notice to the superintendent or designee. The written notice shall include the facts in the oral notice, the name of the person who was orally notified, and the date and time of the oral notice.

Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable a superintendent or designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code or whether it is necessary to conduct a threat assessment or prepare a safety plan related to the student. The information in the notice shall be considered by a superintendent or designee in making such a determination.

Code of Criminal Procedure 15.27(a)

Failure to Provide Notice to District

If the superintendent of a district in which a student is enrolled learns of a failure of the head of a law enforcement agency or designee to provide a notice under Code of Criminal Procedure 15.27(a), the superintendent or principal shall report the failure to the Commission on Law Enforcement Officer Standards and Education. *Code of Criminal Procedure 15.27(m)*

Notice to Employees

A superintendent or designee shall immediately notify all instructional and support personnel who have responsibility for supervision of a student who has been arrested or taken into custody. All personnel shall keep the information received confidential.

A superintendent or designee shall send to an employee having direct supervisory responsibility over the student the information in the confidential notice provided by the law enforcement agency.

Failure to Provide Notice to Employees

If a board learns of a failure by the superintendent or a principal to provide a notice required under Code of Criminal Procedure 15.27(a) or (a-1), the board shall report the failure to the State Board for Educator Certification (SBEC).

Code of Criminal Procedure 15.27(a), (a-1), (l)

Conviction or Adjudication

Oral Notice

On conviction, deferred prosecution, deferred adjudication, or adjudication of delinquent conduct of a student for an offense or for any conduct specified at Reportable Offenses, the office of the prosecuting attorney shall orally notify a superintendent or designee of the conviction or adjudication and whether the student is required to register as a sex offender. Oral notice must be given within 24 hours of the time of the order or before the next school day, whichever is earlier.

Written Notice

Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded and a statement of whether the student is required to register as a sex offender.

Notice to Employees

A superintendent or designee shall, within 24 hours of receiving notice from the office of the prosecuting attorney, or before the next school day, whichever is earlier, notify all instructional and support personnel who have regular contact with the student.

Failure to Provide Notice to Employees

If a board learns of a failure by the superintendent or a principal to provide a notice required under Code of Criminal Procedure 15.27(b), the board shall report the failure to the SBEC.

Code of Criminal Procedure 15.27(b), (l)

Not Guilty/Charges Dropped

The office of the prosecuting attorney or the office or official designated by the juvenile board shall notify the district that removed a student to a (DAEP) if:

1. Prosecution of the student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

2. The court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

Notice shall be provided to the district within two working days.

Review of Placement

On receipt of the notice, the superintendent or designee shall review the student's placement in the DAEP [see FOC].

Code of Criminal Procedure 15.27(g); Education Code 37.006(h)

Transfer Students

If a juvenile justice agency has jurisdiction over a student who is arrested, referred, convicted, or adjudicated for a reportable offense and the student transfers from a school or is subsequently removed from a school and later returned to a school or district other than the one the student was enrolled in when the arrest, referral, conviction, or adjudication occurred, the juvenile justice agency shall notify the superintendent or designee of the district to which the student transfers or is returned.

The juvenile justice agency shall provide notice of an arrest or referral in a manner similar to that provided above, at Arrest. The juvenile justice agency shall provide notice of a conviction or delinquent adjudication in a manner similar to that provided above at Conviction or Adjudication. In either case, notice shall be provided within 24 hours of learning of the student's transfer or reenrollment, or before the next school day, whichever is earlier.

Notice to Employees

The superintendent of the district to which the student transfers or is returned shall, within 24 hours of receiving notice or before the next school day, whichever is earlier, notify all instructional and support personnel who have regular contact with the student.

Code of Criminal Procedure 15.27(c)

Registered Sex Offenders

The local law enforcement authority shall immediately provide notice to the superintendent of the district in which a person subject to registration as a sex offender intends to reside, by mail to the office of the superintendent, as set out below. *Code of Criminal Procedure 62.053(e), (f)*

A local law enforcement authority shall provide notice to a superintendent regarding a registered sex offender only if:

1. The victim was at the time of the offense a child younger than 17 years of age or a student enrolled in a public or private secondary school;

2. The person subject to registration is a student enrolled in a public or private secondary school; or

3. The basis on which the person is subject to registration is a conviction, deferred adjudication, or adjudication of delinquent conduct for an offense under Penal Code 43.25 (Sexual Performance by a Child) or 43.26 (Possession or Promotion of Child Pornography), or a substantially similar offense.

A local law enforcement authority may not provide notice to a superintendent if the basis for the notice is a conviction, deferred adjudication, or adjudication of delinquent conduct for an offense under Section 25.02, Penal Code (Prohibited Sexual Conduct, relating to incest), or a substantially similar offense.

Code of Criminal Procedure 62.054

Notice to Employees

On receipt of the notice from law enforcement regarding a registered sex offender, a superintendent shall release the information in the notice to appropriate district personnel, including peace officers and security personnel, principals, nurses, and counselors. *Code of Criminal Procedure 62.053(e), .055(f)*

Missing Children

Duty to Flag Records

Upon receipt of notification from a law enforcement agency or the missing children and missing persons information clearinghouse that a child under 11 years of age who attended or who is enrolled in the school is missing, the school shall flag the child's records and maintain the records in its possession so that on receipt of a request regarding the child, the school will be able to notify law enforcement or the missing children and missing persons information clearinghouse that a request for a flagged record has been made. *Code of Criminal Procedure 63.020(c), .021*

Request in Person

When a request for a flagged record is made in person, the school may not advise the requesting party that the request concerns a missing child and shall:

1. Require the person requesting the flagged record to complete a form stating the person's name, address, telephone number, and relationship to the child for whom a request is made, and the name, address, and birth date of the child;

2. Obtain a copy of the requesting party's driver's license or other photographic identification, if possible;

3. If the request is for a birth certificate, inform the requesting party that a copy of a certificate will be sent by mail; and

4. Immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and include a physical description of the requesting party, the identity and address of the requesting party, and a copy of the requesting party's driver's license or other photographic identification.

After providing the information listed above, the school shall mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.

Request in Writing

When a request for a flagged record is made in writing, the school may not advise the requesting party that the request concerns a missing child and shall immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and provide to the law enforcement agency a copy of the written request. After providing the notification, the school shall mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.

Code of Criminal Procedure 63.021(d)

Removal of Flag

On the return of a missing child under 11 years of age, the law enforcement agency shall notify each school that has maintained flagged records for the child that the child is no longer missing. On receipt of this notification, the school shall remove the flag from the records.

A school that has reason to believe that a missing child has been recovered may request confirmation that the missing child has been recovered from the appropriate law enforcement agency or the missing children and missing persons information clearinghouse. If a response is not received after the 45th day after the date of the request for confirmation, the school may remove the flag from the record and shall inform the law enforcement agency or the missing children and missing persons information clearinghouse that the flag has been removed.

Code of Criminal Procedure 63.022