

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 ~~section~~ 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 ~~adopted~~ must:

1. Identify annual goals for students in each group evaluated under the closing the gaps domain [see AIA];
2. Include annual goals for aggregate student growth on college, career, and military readiness indicators evaluated under the student achievement domain ~~under~~ [see AIA];
3. 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
4. Be reviewed annually by the board at a public meeting.

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 11.186

[See AIB for annual report requirements.]

JW 7/1/19: HB 3, section 2.003, effective 6/12/2019 and applies beginning the 2019-20 school year.

Placed at EA as per CVC and EN suggestion.

**School Start Date**

A district may not begin instruction for students for a school year before the fourth Monday in August unless the district operates a year-round system (see below). A district may not receive a waiver of this requirement.

## Exceptions

A district that does not offer each grade level from kindergarten through grade 12 and whose prospective or former students generally attend school in another state for the grade levels the district does not offer may instead start school on any date permitted under the law of the other state.

A district with a student enrollment of 190,000 or more may begin instruction for students for a school year on or after the first Monday in August at a campus or at not more than 20 percent of the campuses in the district if:

1. The district at the beginning of the school year provides, financed with local funds, days of instruction for students at the campus or at each of the multiple campuses, in addition to the minimum number of days of instruction required under Education Code 25.081;
2. The campus or each of the multiple campuses are undergoing comprehensive reform, as determined by the board; and
3. A majority of the students at the campus or at each of the multiple campuses are educationally disadvantaged.

*Education Code 25.0811*

**Length of School Year**

Each school year, a district shall operate for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses for students.

## Exceptions

The commissioner [of education](#) may approve the operation of schools for fewer than the number of minutes specified above when disaster, flood, extreme weather conditions, fuel curtailments, or other calamities have caused the closing of schools.

If the commissioner does not approve reduced operation time, a district may add additional minutes to the end of the district's normal school hours as necessary to compensate for minutes lost due to school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

*Education Code 25.081*

[The commissioner shall provide for a waiver allowing for fewer minutes of operation and instructional time than required for a district that requires each educator employed by the district to attend](#)

[an approved school safety training course. \*Education Code 25.0815\(a\)\*](#)

[JW 6/30/19: SB 11, effective 6-6-2019. Section 6 provides additional details about the waiver and the approved course, but I think this is adequate for PRM purposes. We can add more when the commissioner adopts rules. The waiver restrictions in subsection \(b\) seems to apply more to the commissioner's decision.](#)

[The section on TEC 25.081 does not note the exceptions for a year round system or an optional flexible year. Is that intentional? Does it have something to do with funding?](#)

Last Day of School	A district may not schedule the last day of school for students for a school year before May 15. However, a district that does not offer each grade level from kindergarten through grade 12 and whose prospective or former students generally attend school in another state for the grade levels the district does not offer may schedule the last day of school on any date permitted under Texas law or the law of the other state. <i>Education Code 25.0812</i>
Optional Flexible Year Program	To enable a school district to provide additional instructional days for an optional extended year program [see EHBC], the school district may, with the approval of the commissioner, provide a number of days of instruction during the regular school year that is not more than ten days fewer than 180 days. <i>Education Code 29.0821(b)(1)</i>
No Instruction on Memorial Day	A district may not provide student instruction on Memorial Day. If a district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the required number of minutes. <i>Education Code 25.081(f)</i>
Reduction of Funding	The commissioner may proportionally reduce the amount of funding a district receives under Education Code, Chapters <del>464</del> , <del>428</del> , or <del>496</del> and the average daily attendance calculation for the district if the district operates on a calendar that provides fewer minutes of operation than required. <i>Education Code 25.081(fg)</i>

[JW 6/27/19: HB 3, effective September 1, 2019.](#)

[HB 4170, effective 9/1/2019, redesignates 25.081\(f\) as amended by HB 441 from 2017.](#)

## Exemption

A school district is exempt from the minimum minutes of operation requirement if the district's or program's average daily attendance is calculated in the manner provided below. *Education Code 25.081(e)*

A district or charter school is eligible to earn full average daily attendance if the district provides at least 43,200 minutes of instructional time to students enrolled in:

1. A dropout recovery school or program operating under Education Code 12.1141(c) or Education Code 39.0548;
2. An alternative education program operating under Education Code 37.008;
3. A school program located at a day treatment facility, residential treatment facility, psychiatric hospital, or medical hospital;
4. A school program offered at a correctional facility; or
5. A school operating under Education Code 29.259.

*Education Code ~~48~~2.005(j)*

**JW 6/26/19: HB 3, effective 9-1-2019. Subsection (j) did not change from HB 3, but the section was moved to Ch. 48 (page 23).**

Year-Round  
Schools

A district may operate its schools year-round on a single or a multi-track system. If it adopts a year-round system, it may modify:

1. The number of contract days of employees and the number of days of operation, including any time required for staff development, planning and preparation, and continuing education, otherwise required by law.
2. Testing dates, data reporting, and related matters.
3. The date of the first day of instruction of the school year under Education Code 25.0811 for a school that was operating year-round for the 2000–01 school year.
4. Students' eligibility to participate in extracurricular activities when their calendar track is not in session.

*Education Code 25.084*

**JW 7/1/19: Note: Effective 2020, from HB 3, section 1.004 adds incentive aid.**

**Pledges of Allegiance**

A board shall require students, once during each school day, to recite the pledges of allegiance to the United States and Texas flags.

On written request from a student's parent or guardian, a district shall excuse the student from reciting a pledge of allegiance.

**Minute of Silence**

A board shall provide for the observance of one minute of silence following the recitation of the pledges of allegiance. During the one-minute period, each student may reflect, pray, or meditate, or engage in any other silent activity that is not likely to interfere with or distract another student. Each teacher or other school employee in charge of the students during that period shall ensure that each student remains silent and does not act in a manner that is likely to interfere with or distract another student.

*Education Code 25.082*

**Kindergarten Program**

A public school kindergarten may be operated on a half-day or full-day basis as determined by the board. *Education Code 29.152*

## Grant Programs

A district may use funds from grants administered by the commissioner to operate an existing half-day kindergarten on a full-day basis. *Education Code 29.155(a)*

[JW 6/26/19: TEC 29.166 repealed by HB 3, page 300. Effective 9/1/2019.](#)

~~Prekindergarten Grant Programs~~

~~A district is eligible for half-day funding for each eligible student participating in a high-quality prekindergarten grant program. *Education Code 29.166* [See EHBG]~~

**Interruptions**

A board shall adopt and strictly enforce a policy limiting interruptions of classes during the school day for nonacademic activities such as announcements and sales promotions. At a minimum, the policy must limit announcements other than emergency announcements to once during the school day.

**Loss of Class Time**

A board shall adopt and strictly enforce a policy limiting the removal of students from class for remedial tutoring or test preparation. A district may not remove a student from a regularly scheduled class for remedial tutoring or test preparation if, as a result of the removal, the student would miss more than ten percent of the school days on which the class is offered, unless the student's parent or another person standing in parental relation to the student provides to the district written consent for removal from class for such purpose. [See EHBC for provisions on tutorial services.]

*Education Code 25.083*

**Teacher-Student Ratio**

A district shall employ a sufficient number of certified teachers to maintain an average ratio of not less than one teacher for each 20 students in average daily attendance. *Education Code 25.111*

**High-Quality Prekindergarten Grant Program**

A district operating a prekindergarten program ~~under Education Code Chapter 29, Subchapter E-1~~ must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for each 11 students. *Education Code 29.167(d)*

JW 6/26/19: HB 3, section 2.021. Effective 6/12/2019 and applies beginning the 2019-20 school year. Also, the HQ prekindergarten program has removed all "grant" designations as it is now required for certain prekindergarten programs.

**Physical Education**

A district's physical education curriculum objectives and goals shall address teacher-student ratios. [See EHAA] *Education Code 25.114*

**Kindergarten–Grade 4**

A district shall not enroll more than 22 students in a class, kindergarten through fourth grade, except as allowed by the commissioner of education. The limit on class size, kindergarten through grade 4, shall not apply during:

1. The last 12 weeks of the school year; or
2. Any 12-week period of the school year selected by a district, if the district's average daily attendance has been adjusted due to a significant percentage of students who are migratory children under Education Code 482.005(c). A district claiming this exemption must notify the commissioner in writing not later than the 30th day after the first day of the 12-week period.

~~2.~~ JW 6/26/19: HB 3 conforming amendments, September 1, 2019 effective date.

A "migratory child" is a child or youth who made a qualifying move:

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 migratory fisher.

A "qualifying move" is a move due to economic necessity:

1. From one residence to another residence; and
2. From one school district to another school district, except in the case of a school district of more than 15,000 square miles, wherein a qualifying move is a distance of 20 miles or more to a temporary residence.

A “migratory agricultural worker” is an individual who made a qualifying move in the preceding 36 months and, after doing so, engaged in new temporary or seasonal employment or personal subsistence in agriculture, which may be dairy work or the initial processing of raw agricultural products. If an individual did not engage in such new employment soon after a qualifying move, such individual may be considered a migratory agricultural worker if the individual actively sought such new employment and has a recent history of moves for temporary or seasonal agricultural employment.

A “migratory fisher” is an individual who made a qualifying move in the preceding 36 months and, after doing so, engaged in new temporary or seasonal employment or personal subsistence in fishing. If the individual did not engage in such new employment soon after the move, the individual may be considered a migratory fisher if the individual actively sought such new employment and has a recent history of moves for temporary or seasonal fishing employment.

*Education Code 25.112(a), (b); 20 U.S.C. 6399*

Exception to Class  
Size Limits

The commissioner may except a district, on application, from the class size limits above if the limit works an undue hardship on the district. An exception expires at the end of the school year for which it is granted.

A school district seeking an exception shall notify the commissioner and apply for the exception not later than the later of:

1. October 1; or
2. The 30th day after the first school day the district exceeds the limit described above.

*Education Code 25.112(d)–(e)*

Notice to Parents

A campus or district that is granted an exception from class size limits shall provide written notice of the exception to the parent of or person standing in parental relation to each student affected by the exception. The notice must be in conspicuous bold or underlined print and:

1. Specify the class for which an exception was granted;
2. State the number of children in the class; and
3. Be included in a regular mailing or other communication from the campus or district, such as information sent home with students.



INSTRUCTIONAL ARRANGEMENTS  
CLASS SIZE

EEB  
(LEGAL)

The notice must be provided not later than the 31st day after the first day of the school year or the date the exception is granted, if the exception is granted after the beginning of the school year.

*Education Code 25.113*

## Funding

If a district provides education services to pre-adjudicated and post-adjudicated students who are confined by court order in a juvenile residential facility operated by a juvenile board, the district is entitled to count those students in the district's average daily attendance.

If a district has a ~~wealth per student~~ local revenue level greater than the guaranteed ~~wealth~~ local revenue level but less than the ~~equalized wealth~~ level established under Education Code 48.257, the district in which the student is enrolled on the date a court orders the student to be confined to a juvenile residential facility shall transfer to the district providing education services an amount equal to the difference between:

**JW 6/26/19; HB 3, conforming amendments, Effective September 1, 2019, Section 3.041.**

1. The average Foundation School Program costs per student of the district providing education services; and
2. The sum of the state aid and the money from the available school fund received by the district that is attributable to the student for the portion of the school year for which the district provides education services to the student.

*Education Code 37.0061*

## Operations

### Definitions

A "pre-adjudication secure detention facility" is a secure facility administered by a governing board that includes construction and fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility and is used for the temporary placement of any juvenile or other individual who is accused of having committed an offense and is awaiting court action, an administrative hearing, or other transfer action.

A "post-adjudication secure correctional facility" is a secure facility administered by a governing board or the Texas Juvenile Justice Department that includes construction and fixtures designed to physically restrict the movements and activities of the residents and are intended for the treatment and rehabilitation of youth who have been adjudicated. A post-adjudication secure correctional facility does not include any non-secure residential program operating under the authority of a juvenile board as defined by Family Code 51.12(j).

A "resident" is a juvenile or other individual who has been admitted into a pre-adjudication secure detention facility or a post-adjudication secure correctional facility.

“Residential facility” means:

1. A facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any noneducational purpose; and
2. Any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under item 1.

A “school district” is the educational service provider in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility. For the purposes of this section addressing OPERATIONS, the definition of school district includes open-enrollment charter school.

*Education Code 5.001(8); 19 TAC 89.1801(a)*

Enrollment

*Pre-Adjudication  
Secure Detention  
Facility*

The school district providing the education services in a pre-adjudication secure detention facility shall ensure that a student is enrolled in its district or, by local agreement, in the student’s locally assigned school district on the first school day after the student’s arrival at the facility unless it is confirmed that the student will return to a different district within ten school days. The district that maintains a student’s enrollment is responsible for ensuring that appropriate education services are provided to each of its students while in the facility.

*Post-Adjudication  
Secure  
Correctional  
Facility*

The school district providing the education services in a post-adjudication secure correctional facility shall ensure that a student is enrolled in its district or, by local agreement, in the student’s locally assigned district on the student’s first school day in the facility as a court-committed juvenile.

*Academic  
Records*

The school district in the facility shall coordinate with the student’s previous locally assigned campus to ensure that appropriate academic records are received within ten school days of the student’s enrollment.

*19 TAC 89.1801(b)*

Class Size

The school district shall ensure that the classroom ratio does not exceed one certified educator to 24 students per class period. *19 TAC 89.1801(c)*

Pre-Assessment

The school district shall ensure that a pre-assessment is administered to students in a post-adjudication secure correctional facility. The pre-assessment shall:

1. Be administered within ten school days from the student's first day of enrollment; and
2. At a minimum, evaluate the student's basic reading and mathematics skills in relation to the student's current grade level.

*19 TAC 89.1801(d)*

Curriculum

Each school district shall, at a minimum, provide students with the subjects and courses necessary to complete the Minimum High School Program, as specified in 19 Administrative Code 74.62. The school district shall ensure that the educational services of the students consist of curriculum that is aligned with the requirements described in Education Code 28.002 and the Texas Essential Knowledge and Skills (TEKS).

*Pre-Adjudication*

Each school district in a pre-adjudication secure detention facility shall ensure that a student is provided courses that afford an opportunity of continued progress toward the completion of the Minimum High School Program.

*Post-Adjudication*

Each school district in the post-adjudication secure correctional facility shall, at a minimum, provide a student curriculum that enables the student the opportunity to complete the requirements of the Minimum High School Program. The school district shall provide students, ages 15–18 and identified as appropriate candidates, the opportunity and resources to prepare for the five general educational development examinations.

*19 TAC 89.1801(e)*

Award of Credit

The school district shall grant credits for coursework completed to ensure that high school credit is awarded to students for the successful completion of required courses while enrolled in educational services at the facility. *19 TAC 89.1801(f)*

Length and Number of School Days

The school district shall, at a minimum, provide a seven-hour school day that consists of at least five and one-half hours of required secondary curriculum to students in the facility. For each school year, each school district must operate so that the facility provides for at least 180 days of instruction for students.

Students with Disabilities

The school district shall ensure that students with disabilities are provided instructional days commensurate with those provided to students without disabilities in accordance with requirements contained in 19 Administrative Code 89.1075(e).

*19 TAC 89.1801(g)*

**School Library**

A district possesses significant discretion to determine the content of its school libraries. A district must, however, exercise its discretion in a manner consistent with the First Amendment.

Removal of Library  
Materials

Students' First Amendment rights are implicated by the removal of books from the shelves of a school library. A district shall not remove materials from a library for the purpose of denying students access to ideas with which the district disagrees. A district may remove materials because they are pervasively vulgar or based solely upon the educational suitability of the books in question.

*Bd. of Educ. v. Pico, 457 U.S. 853 (1982)*

**Instructional  
Materials**

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*

**JW 7/6/19: HB 4170, section 5.003, amends this statute to fix a 2017 issue, but it does not change our policy text.**

## Parental Access

A parent is entitled to review all teaching materials, instructional materials, and other teaching aids used in the classroom of the parent's child and to review each test administered to the child after the test is administered. A district shall make teaching materials and tests readily available for parental review and may specify reasonable hours for such review.

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.

[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.](#)

*Education Code 26.006*

**JW 6/13/19: HB 391, 6/14/2019. Applies beginning with the 2019-20 school year.**

**Information  
Collection and  
Access**

U.S. DOE–Funded  
Surveys

*Consent  
Required*

*Parental  
Inspection*

Information  
Collection Funded  
by Other Sources

*Policies*

No student shall be required, as part of any program funded in whole or in part by the U.S. Department of Education (DOE), to submit to a survey, analysis, or evaluation that reveals information concerning the topics listed at Protected Information, below, 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. *20 U.S.C. 1232h(b)*

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 U.S. DOE shall be available for inspection by the parents or guardians of the children. *20 U.S.C. 1232h(a)*

Except as provided by 20 U.S.C. 1232h(a) or (b) [see U.S. DOE Funded Surveys, above], as a condition of receiving funds for a program funded in whole or in part by the U.S. DOE, 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 Protected Information, below, 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 instructional 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 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 section:

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 Protected Information, below.
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]

Protected Information

Protected information addressed by 20 U.S.C. 1232h includes:

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 respondents 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), (c)(1)(B)*

“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)*



**Purpose**

A primary purpose of the public school curriculum is to prepare thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage. A district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter, in reading courses, and in the adoption of textbooks. *Education Code 28.002(h)*

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*

**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

2.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)*

JW 6/30/19: SB 11, effective 6-6-2019. This might be too much detail. I could also say "health with an emphasis on items listed in..."

Also, should I add digital citizenship requirements to this policy? Or should we wait until we have a rule? The way SB 11 is phrased is that the SBOE shall require the district to incorporate it into the district's curriculum. Should we wait until the SBOE makes that requirement?

### Digital Citizenship

The State Board of Education 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)

JW 7/23/19: Joy and CVC recommended adding this now. I will likely replace with the rule later.

### 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 State Board 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**

[In adopting a recommended or designated scope and sequence 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\(a\)](#)

**JW 7/1/19: HB 4310, effective 6-14-2019. MT will put subsections (b) and (c) in DG and cross reference EHAA.**

**Coordinated Health Programs**

TEA shall make available to a district one or more coordinated health programs or allow the development of district programs designed to prevent obesity, cardiovascular disease, oral disease, and type 2 diabetes in elementary, middle, and junior high school students. Each program must provide for coordinating:

1. Health education, including oral health education;
2. Physical education and physical activity;
3. Nutrition services; and
4. 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 ~~school~~ 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 health education;
2. Policies, procedures, strategies, and curriculum appropriate for specific grade levels designed to prevent obesity, cardiovascular disease, type 2 diabetes, and mental health concerns, [including suicide](#), through coordination of:

- a. Health education,
  - b. Physical education and physical activity,
  - c. Nutrition services,
  - d. Parental involvement,
  - e. Instruction to prevent the use of e-cigarettes, as defined by Health and Safety Code 161.081, and tobacco,
  - f. School health services,
  - g. Counseling and guidance services,
  - 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,
    - b. Counseling and guidance services,
    - c. A safe and healthy school environment, and
    - d. School employee wellness; **and**
  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; **and**
  6. Appropriate grade levels and curriculum for instruction regarding opioid addiction and abuse and methods for administering an opioid antagonist; and
  7. 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 abuse disorders; and
    - b. Available community programs and services that address risky behaviors, suicide risks, and behavioral health concerns.

~~5-~~

*Education Code 28.004(c), (n)*

JW 6/13/19: SB 435, effective 5/31/2019.

SB 11 added “including suicide” and number 7, which is number (6) in the statute. Effective 6/6/2019.

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 unstructured 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)*

JW 6/30/19: SB 11, effective 6-6-2019. I added Policy Recommendations as margin 3 because they fit with the duties of the SHAC, but I think it would look better at margin 2.

**Content of Human  
Sexuality Instruction**

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 instruction on contraception and condoms is included in the curriculum.

*Education Code 28.004(e)*

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]

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 summary of the basic content of the district's human sexuality instruction to be provided to the student, including a statement informing the parent of the instructional requirements under state law;
2. A statement of the parent's right to:
  - a. Review curriculum materials as provided by Education Code 28.004(j); and
  - 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
3. 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.

A parent may use the grievance procedure at FNG concerning a complaint of a violation of notice requirements.

*Education Code 28.004(i)-(i-1)*

Availability of Materials A district shall make all curriculum materials used in human sexuality instruction available for reasonable public inspection. *Education*



*Code 28.004(j)* [See EFA regarding selection of curriculum materials for human sexuality instruction]

**Steroid Notice and Education**

~~Each school in a district in which there is a grade level of seven or higher shall post in a conspicuous location in the school gymnasium and each other place in a building where physical education classes are conducted a notice regarding steroids, using the text set forth at Education Code 38.008 [see FNCF(LEGAL)]. Education Code 38.008~~

~~A district shall, at appropriate grade levels as determined by the State Board of Education, provide to students involved in extracurricular athletic activities information developed by TEA regarding the use of anabolic steroids and the health risks involved with such use. Education Code 38.0081(b)~~

7/2/19: SB 1376 repeals TEC 38.0081, effective 6-4-2019. Applies beginning the 2019-20 school year.

JW 7/23/19: CVC points out that steroid education notice information is already in FNCF(LEGAL). Therefore, I deleted whole section on steroid information.

**Character Education**

A district must adopt a character education program that includes the following positive character education traits:

1. Courage;
2. Trustworthiness, including honesty, reliability, punctuality, and loyalty;
3. Integrity;
4. Respect and courtesy;
5. Responsibility, including accountability, diligence, perseverance, and self-control;
6. Fairness, including justice and freedom from prejudice;
7. Caring, including kindness, empathy, compassion, consideration, patience, generosity, and charity;
8. Good citizenship, including patriotism, concern for the common good and the community, and respect for authority and the law; and
9. School pride; and
10. Gratitude.

In developing or selecting a character education program under ~~this section~~ 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

**JW 6/13/19: HB 1026, effective 6/14/2019. Material has been moved from EHBK. SBOE may adopt rules. Applies beginning with 2019-20 school year.**

**Essential Knowledge  
and Skills**

A district that offers kindergarten through grade 5 must provide instruction in the required curriculum as specified in 19 Administrative Code 74.1 (relating to Essential Knowledge and Skills).

A district shall ensure that sufficient time is provided for teachers to teach and students to learn English language arts, mathematics, science, social studies, fine arts, health, physical education, technology applications, and to the extent possible, languages other than English.

*19 TAC 74.2*

**Daily Physical  
Activity**

A district shall require students in kindergarten through grade 5 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.

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)*

**Grade 6 Fine Arts**

A district that provides instruction for grade 6 in a self-contained elementary class as part of elementary school shall provide instruction for students in grade 6 in all of the Middle School 1 TEKS for art, dance, music, and theatre as specified in 19 Administrative Code Chapter 117. *Education Code 28.002(c-1); 19 TAC 74.2(b)*

**K-3-Kindergarten-  
Grade 3 Reading  
Standards Program**

[A district shall provide for the use of a phonics curriculum that uses systematic direct instruction in kindergarten through third grade to ensure all students obtain necessary early literacy skills.](#)

[A district shall certify to the Texas Education Agency \(TEA\) that the district prioritizes placement of highly effective teachers in kindergarten through second grade and has integrated reading instruments used to diagnose reading development and comprehension to support each student in prekindergarten through third grade.](#)

[Education Code 28.0062\(a\)\(1\), \(a\)\(3\) \[See DMA for early literacy personnel requirements\]](#)

JW 6/14/19: HB 3, Section 2.013, effective 6/12/2019. MT will put the rest of the early literacy provisions in this section for to a D section because they are about training and certification for early literacy personnel.

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*

**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, and Economics with Emphasis on the Free Enterprise System and Its Benefits.
5. Physical education — at least two of the following:
  - a. Foundations of Personal Fitness;
  - b. Adventure/Outdoor Education;
  - c. Aerobic Activities; or

- d. Team or Individual Sports.
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] — coherent sequences of courses selected from at least three of the following 16 career clusters:
- a. Agriculture, Food, and Natural Resources;
  - b. Architecture and Construction;
  - c. Arts, Audio/Video Technology, and Communications;
  - d. Business Management and Administration;
  - e. Education and Training;
  - f. Finance;
  - g. Government and Public Administration;
  - h. Health Science;
  - i. Hospitality and Tourism;
  - j. Human Services;
  - k. Information Technology;
  - l. Law, Public Safety, Corrections, and Security;
  - m. Manufacturing;
  - n. Marketing;
  - o. Science, Technology, Engineering, and Mathematics;  
and
  - p. Transportation, Distribution, and Logistics.
8. Languages other than English — Levels I, II, and III or higher of the same language.
9. Technology applications — Computer Science I and Computer Science II or Advanced Placement (AP) Computer Science and at least two of the following:



- a. Computer Science III;
  - b. Digital Art and Animation;
  - c. Digital Communications in the 21st Century;
  - d. Digital Design and Media Production;
  - e. Digital Forensics;
  - f. Digital Video and Audio Design;
  - g. Discrete Mathematics for Computer Science;
  - h. Fundamentals of Computer Science;
  - i. Game Programming and Design;
  - j. Independent Study in Evolving/Emerging Technologies;
  - k. Independent Study In Technology Applications;
  - l. Mobile Application Development;
  - m. Robotics Programming and Design;
  - n. 3-D Modeling and Animation;
  - o. Web Communications;
  - p. Web Design; and
  - q. Web Game Development.
10. Speech — Communications Applications.
11. 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.

*19 TAC 74.3(b)(2); Education Code 28.0021(b)*

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\(b-6\)](#)

**JW 6/13/19: I'm on the fence about this addition. SB 1374, effective 6/1/2019. On one hand, we don't usually provide this level or this type of curriculum detail. On the other hand, this is something that administrators will need to know and this process will inform them. Should I include?**

**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)*

**CPR Instruction**

For all students who entered grade 7 in the 2010–11 school year and thereafter, a district shall provide instruction to students in

grades 7–12 in cardiopulmonary resuscitation (CPR). The instruction may be provided as a part of any course. A student shall receive the instruction at least once before graduation from high school.

CPR instruction must include training 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 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; otherwise, an instructor 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 requirement 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.

*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. A district may accept other donations, including donations of equipment, for use in providing CPR instruction. *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 State Board of Education, and the Texas Education Agency. 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*

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**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.

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**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 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)*

**Discipline**

All disciplinary actions regarding students with disabilities shall be in accordance with federal requirements, Education Code Chapter 37, and 19 Administrative Code 89.1053. *19 TAC 89.1050(k)* [See FOF]

**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:

1. Mainstream: providing services in a regular classroom;
2. Homebound: providing services at home or hospital bedside;
3. Hospital class: providing services in a classroom, hospital facility, or residential care and treatment facility not operated by a district;
4. Speech therapy: providing speech therapy services in a regular education classroom or other setting;
5. Resource room/services: providing services in a setting other than the regular classroom for less than 50 percent of the regular school day;
6. Self-contained (mild, moderate, or severe) regular campus: providing services to a student who is in a self-contained program for 50 percent or more of the regular school day on a regular school campus;
7. Off-home campus: providing services to nondistrict students in a single location, through district personnel at a nondistrict facility, or at a district campus that provides only special education and related services;
8. Nonpublic day school: providing services through a contractual agreement with a nonpublic school for special education;
9. Vocational adjustment class/program: providing services to a student who is placed on a job (paid or unpaid) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP;
10. Residential care and treatment facility (not district resident): providing services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the district; or
11. State supported living center: providing services to a student who resides at a state supported living center when the services are provided at the state supported living center location.

**Other Program  
Options**

Other program options that may be considered for the delivery of special education and related services to a student include contracts with other districts and programs approved by TEA.

*19 TAC 89.63(c), (f)*

~~Shared Services  
Arrangements~~

~~A district may enter into a written contract to jointly operate its special education program. The contract must be approved by the Commissioner. Education Code 29.007~~

JW 7/1/19: SB 1376 repealed TEC 29.007, effective 6/4/2019. CVC may want to note in the update notes that this doesn't mean that districts cannot have shared service arrangements.

**Related Services**

Definition

“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.

*34 C.F.R. 300.106; 19 TAC 89.1065*



**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*

**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)*

Referral of students for a full individual and initial evaluation for possible special education services shall be a part of a district's overall general education referral or screening system. Either a parent, TEA, another state agency, or the district may initiate a request for an initial evaluation.

District Obligation to  
Refer

Before referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students. If a student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation.

Parental Request	<p>If a parent submits a written request to a district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:</p> <ol style="list-style-type: none"> <li>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, and an opportunity to give written consent for the evaluation; or</li> <li>2. Provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 C.F.R. 300.503, and a copy of the procedural safeguards notice required by 34 C.F.R. 300.504.</li> </ol> <p><i>20 U.S.C. 1414(a)(1); 34 C.F.R. 300.301; 19 TAC 89.1011(a), (b); Education Code 29.004(c)</i></p>
Notice of Rights	<p>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. <i>20 U.S.C. 1415(b)(3); 34 C.F.R. 300.503(a)</i> [See EHBAE]</p>
Initial Evaluation Required	<p>A district shall conduct a full individual and initial evaluation before the initial provision of special education and related services. <i>20 U.S.C. 1414(a)(1)(A)</i></p>
<i>Consent for Initial Evaluation</i>	<p>Before a district conducts an initial evaluation, it shall make reasonable efforts to obtain informed parental consent.</p> <p>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.</p> <p>Parental consent to initial evaluation shall not be construed as consent for placement for special education and related services.</p> <p><i>20 U.S.C. 1414(a)(1)(D)(i)(I); 34 C.F.R. 300.300(b)</i></p>
Wards of the State	<p>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:</p> <ol style="list-style-type: none"> <li>1. Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent;</li> </ol>

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 full individual and initial evaluation 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 signed by a student's parent less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, the report must be completed not later than the 45th school day following the date the district received written consent, except that 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.

A student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school

district or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

“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.

These time frames shall not apply if the parent repeatedly fails or refuses to produce the child for the evaluation.

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.

If a student was in the process of being evaluated for special education eligibility by a district and enrolls in another school district before the previous district completed the full individual and initial evaluation, 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 time lines 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.

*20 U.S.C. 1414(a)(1)(C), (b)(3)(D); 34 C.F.R. 300.301(c)–(e); Education Code 29.004; 19 TAC 89.1011*

*Psychological  
Examinations*

If a district determines that an additional examination or test is required for the initial and individual evaluation, the district shall provide the information required by Education Code 29.0041(a) and shall obtain additional parental consent. If a parent does not give consent within 20 calendar days after the district provided the information, the parent's consent is considered denied.

The time required for a district to provide information and seek consent may not be counted toward the time frame for completion of an evaluation. [See Time Frame for Completion of Written Report, above]

*Education Code 29.0041*

**Eligibility and  
Reevaluations**

A student is eligible to participate in a district’s special education program if:

1. The student is between the ages of 3 and 21, inclusive;
2. The student has one or more of the disabilities listed in federal regulations, state law, or both; and
3. The student’s disability(ies) prevents the student from being adequately or safely educated in the public schools without the provision of special services.

*20 U.S.C. 1401(3); Education Code 29.003(b); 19 TAC 89.1035, .1040*

**Visual and Auditory  
Impairments**

A student with a visual or auditory impairment 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*

JW 7/8/19: TEC 30.002 goes into much greater detail about an IEP for students with this type of disability. Do we want to include more? Is there a way to say “look at the statute for more information”? I added a subsection (e) because it may help inform the reader that TEC 30.002 includes more details. SB 522, effective 6/4/2019, amended TEC 30.002, but it does not affect this general statement in policy.

**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) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year (ESY) services during that summer.

When a report is provided to a parent not later than June 30 as described at Time Frame for Completion of Written Report, above, the ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, an evaluation indicates that a student will need ESY services, the ARD committee must meet as expeditiously as possible.

*19 TAC 89.1011(d), (e)*

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 shall evaluate a child 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; a summary of academic achievement and functional performance must be provided in these circumstances. *20 U.S.C. 1414(c)(5); 34 C.F.R. 300.305(e), 19 TAC 89.1070(h)*

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.

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)*



**Shared Services  
Arrangements**

~~A district may enter into a written contract to jointly operate its special education program. The contract must be approved by the commissioner of education. *Education Code 29.007*~~

JW 7/9/19; JW 7/1/19; SB 1376 repealed TEC 29.007, effective 6/4/2019. CVC may want to note in the update notes that this doesn't mean that districts cannot have shared service arrangements.

**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

*Reimburse Ment*

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	<p>The district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.</p> <p>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.</p> <p><i>19 TAC 89.1096(c), (d)</i></p>
<b>Transportation</b>	<p>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. <i>19 TAC 89.1096(e)</i></p>
<b>District Charter Schools</b>	<p>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. <i>20 U.S.C. 1413(a)(5); 34 C.F.R. 300.209(b)</i></p>
<b>Residential Facilities</b>	<p>If a residential facility that is licensed by appropriate state agencies is located within the district's boundaries, the district must provide special education and related services to eligible students residing in the facility.</p> <p>If, after contacting the facility to offer services to eligible students with disabilities, a district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the district is not required to provide services. However, a district shall annually contact the facility to offer services to eligible students with disabilities.</p> <p><i>19 TAC 89.1001(c)</i></p>
Identification of Students	
District Placements	<p>A district may contract with a public or private facility, institution, or agency inside or outside of Texas for residential placement for a student with a disability when the ARD committee determines that a residential placement is necessary for the student to receive FAPE. Contracts for residential placement must be approved by the commissioner. <i>Education Code 29.008(a); 19 TAC 89.61(a)</i></p> <p>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. <i>34 C.F.R. 300.104</i></p>

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. *Education Code 29.008(d)*

Further, a district shall have the responsibilities set forth at 19 Administrative Code 89.61 regarding students in residential placements.

Out-of-State  
Placements

If a district contracts for an out-of-state residential placement, it shall do so in accordance with the rules for in-state residential placement, except that the facility shall be approved by the appropriate agency in the state in which the facility is located rather than by the Texas commissioner of education. *19 TAC 89.61(c)(3)*

**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 district may request services through the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf in accordance with 19 Administrative Code 89.1085. *19 TAC 89.1085*

**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)*

**Procedural  
Safeguards**

A district shall establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). *20 U.S.C. 1415(a)*

These procedures shall include the following:

1. An opportunity for the parents to review all education records and to participate in meetings relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. *34 C.F.R. 300.501*
2. An opportunity for the parents to obtain an independent educational evaluation of the child. *34 C.F.R. 300.502*
3. Protecting the rights of a child when no parent can be identified, a district cannot locate the parents, or the child is a ward of the state, which may include the assignment of an individual to act as a surrogate parent. *34 C.F.R. 300.519*
4. Prior written notice to the parents when a district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. *34 C.F.R. 300.503* [See Prior Notice and Consent, below]
5. Procedures to allow parties to resolve disputes through a mediation process. *34 C.F.R. 300.506*
6. An opportunity for any party to file a due process complaint on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. [See Dispute Resolution, below] *34 C.F.R. 300.507*
7. Procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which shall remain confidential). *34 C.F.R. 300.508*

**Consent**

Consent means that:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
2. The parent understands and agrees in writing to the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. A revocation of consent is not retroactive.

If the parent revokes consent in writing for his or her child's receipt of services after the child is initially provided special education and related services, the district is not required to amend the child's education records to remove any references to the child's receipt of services because of the revocation of consent.

*34 C.F.R. 300.9*

**Language of Notices**

The procedural safeguards and prior notices described below must be written in language understandable to the general public. The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. *34 C.F.R. 300.503(c), .504(d)*

**Electronic Delivery of Notices**

A parent may elect to receive the procedural safeguards notice, prior notice, or notice of due process complaint by electronic mail if a district makes that option available. *34 C.F.R. 300.505*

**Procedural Safeguards Notice**

A district shall provide a copy of the procedural safeguards to parents only one time a year, except that a copy also shall be given to the parents:

1. Upon initial referral or parental request for evaluation;
2. Upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year;
3. On the date of a decision to make a disciplinary removal that is a change in placement; and
4. Upon request by a parent.

A district may place a current copy of the procedural safeguards notice on its website, if it has one.

**Contents of Notice**

The notice shall include a full explanation of the procedural safeguards relating to:

1. Independent educational evaluations;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;

5. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
  - a. The time period in which to file a complaint;
  - b. The opportunity for the district to resolve the complaint; and
  - c. The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional time-lines, and relevant procedures.
6. The availability of mediation;
7. The child's placement during pendency of any due process proceedings;
8. Procedures for children who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of children in private schools at public expense;
10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
11. Civil actions, including the time period in which to file such actions; and
12. Attorneys' fees.

*20 U.S.C. 1415(a)–(b), (d); 34 C.F.R. 300.504*

**Prior Notice and  
Consent**

A district shall provide prior written notice to the parents a reasonable time before the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child or the provision of FAPE to the child. *34 C.F.R. 300.503(a)*

Notice must be provided to the parent in the parent's native language or other mode of communication at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter time frame. *19 TAC 89.1050(h)*

Contents of Notice

The notice must include:

1. A description of the action proposed or refused by the district;
2. An explanation of why the district proposes or refuses to take the action;



3. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
4. A statement that the parents have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the [Individuals with Disabilities Act \(IDEA\)](#) rules;
6. A description of other options the [admission, review, and dismissal \(ARD\)](#) committee [see EHBAB] considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the district's proposal or refusal.

*34 C.F.R. 300.503(b)*

Consent to Initial Evaluation	Before a district conducts an initial evaluation, it shall provide prior written notice, including a description of any evaluation the district proposes to conduct, and obtain informed consent for the evaluation from the parents. <i>20 U.S.C. 1414(a)(1)(D), (E); 34 C.F.R. 300.304(a)</i>
Consent to Services	A district shall seek informed consent from the parent before providing special education and related services to a child. <i>20 U.S.C. 1414(a)(1)(D)</i> [See EHBAA]
Consent to Reevaluation	A district shall obtain informed parental consent before conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the district can demonstrate that it has taken reasonable measures to obtain such consent and the parent has failed to respond. <i>20 U.S.C. 1414(c)(3)</i>
Psychological Examinations and Tests	<p>On request of a child's parent, before obtaining the parent's consent for the administration of any psychological examination or test to the child as part of the evaluation of the child's need for special education, a district shall provide to the child's parent:</p> <ol style="list-style-type: none"><li>1. The name and type of the examination or test; and</li><li>2. An explanation of how the examination or test will be used to develop an appropriate individualized education program (IEP) for the child.</li></ol> <p>If a district determines that an additional examination or test is required for the evaluation of a child's need for special education, the district shall provide the information above to the parent regarding</p>

the additional examination or test and shall obtain additional consent for the examination of test.

*Education Code 29.0041(a), (b)*

**Dispute Resolution**

The possible options for resolving disputes that arise between a parent and a school district relating to the identification, evaluation, or educational placement of or the provision of FAPE to a student with a disability include, but are not limited to:

1. ARD committee meetings, including IEP facilitation if offered by the district, under 19 Administrative Code 89.1196;
2. Meetings or conferences with the student's teachers;
3. Meetings or conferences, subject to the district's policies, with the campus principal, special education director, superintendent, or board;
4. Requesting state IEP facilitation in accordance with 19 Administrative Code 89.1197;
5. Requesting mediation through [the Texas Education Agency \(TEA\)](#) in accordance with 19 Administrative Code 89.1193;
6. Filing a complaint with TEA in accordance with 19 Administrative Code 89.1195; or
7. Requesting a due process hearing through TEA in accordance with 19 Administrative Code 89.1151–.1191.

*19 TAC 89.1150*

**Due Process  
Complaint**

Whenever a due process complaint has been received by a district, the parent shall have an opportunity for an impartial due process hearing, which shall be conducted by an impartial hearing officer selected by TEA. [For TEA rules on due process hearings, see 19 Administrative Code 89.1151–.1191.]

*Timeline*

Such due process complaint must set forth an alleged violation that occurred not more than one year before the date the parent knew or should have known about the alleged action that forms the basis of the complaint.

*20 U.S.C. 1415(f)(1)(A); 19 TAC 89.1151(c), .1170(a)*

*Exception*

This timeline shall not apply if the parent was prevented from requesting a hearing due to:

1. A specific misrepresentation by a district that it had resolved the problem forming the basis of the complaint; or

2. A district's withholding of information from the parent that the district was required by the IDEA to provide.

*20 U.S.C. 1415(f)(3)(D); 34 C.F.R. 300.511(f), 19 TAC 89.1151(d)*

**"Stay Put"**

During the pendency of any proceeding conducted under IDEA part B (except proceedings to challenge a disciplinary change of placement or manifestation determination), the child shall remain in the then-current educational placement unless the district and the parent agree otherwise. If the child is applying for initial admission to a public school, the child shall, with the consent of the parents, be placed in the public school program until all proceedings have been completed. *20 U.S.C. 1415(j); 34 C.F.R. 300.518, .533*

*Exception*

When a due process hearing has been requested by a parent or district concerning a disciplinary change of placement or manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the child's assignment to the alternative setting, or the 45-day time line, if applicable, whichever occurs first, unless the parent and district agree otherwise. *20 U.S.C. 1415(k)(3)(A), 1415(k)(4)(A); 34 C.F.R. 300.533 [See FOF]*

**Resolution Process**

Within 15 calendar days of receiving notice of a parent's due process complaint, and before initiating a due process hearing, a district shall convene a meeting with the parent and the relevant member or members of the ARD committee. The purpose of the meeting is for the parent to discuss the due process complaint and the facts that form the basis of the due process complaint, so that the district has the opportunity to resolve the dispute.

The meeting need not be held if the parent and the district agree in writing to waive the meeting, or the parent and the district agree to use the mediation process.

If the district has not resolved the due process complaint to the satisfaction of the parent within 30 calendar days of the receipt of the complaint, the due process hearing may occur. If the district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, the district may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's request for a hearing.

*34 C.F.R. 300.510, 19 TAC 89.1183*

**Transfer of Rights to Adult Students**

Not later than one year before the 18th birthday of a student with a disability, the district at which the student is enrolled shall:

1. Provide to the student and the student's parents:

- a. Written notice regarding the transfer of rights; and
  - b. Information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently; and
2. Ensure that the student's IEP includes a statement that the district provided the required notice, information, and resources.

If a student with a disability or the student's parent requests information regarding guardianship or alternatives to guardianship from the district, the district shall provide to the student or parent information and resources on supported decision-making agreements under Estates Code, Chapter 1357.

A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability. All other rights accorded to parents under Chapter 29, Subchapter A of the Education Code or 20 U.S.C. 1415 transfer to the student.

*34 C.F.R. 300.520; Education Code 29.017(a), (c), (c-1), (c-2); 19 TAC 89.1049(a)*

Notice

When a student reaches the age of 18, a district shall provide written notice to the student and the student's parents of the transfer of parental rights. This notice is separate and distinct from the requirement that, beginning at least one year before the student reaches the age of 18, the student's IEP include a statement regarding transfer of parental rights.

The notice must include information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement, and other supports and services that enable the student to live independently. The notice must also provide contact information for the parties to use in obtaining additional information.

*34 C.F.R. 300.520(a)(3); Education Code 29.017(c); 19 TAC 89.1049(c)*

**Special Education  
Decision-Making for  
Children in Foster  
Care**

A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:

1. The Department of Family and Protective Services (DFPS) is appointed as the temporary or permanent managing conservator of the child;
2. The rights and duties of the department to make decisions regarding education provided to the child under Family Code 153.371 have not been limited by court order; and
3. The foster parent agrees to:
  - a. Participate in making special education decisions on the child's behalf; and
  - b. Complete a training program that complies with minimum standards established by agency rule.

#### Training

A foster parent who will act as a parent of a child with a disability must complete a training program before the next scheduled ARD committee meeting for the child but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions.

A district may not require a foster parent to retake a training program to continue serving as a child's parent or to serve as the surrogate parent for another child if the foster parent has completed a training program to act as a parent of a child with a disability provided by:

1. DFPS;
2. A school district;
3. An education service center; or
4. Any other entity that receives federal funds to provide special education training to parents.

A foster parent who is denied the right to act as a parent by a school district may file a complaint with TEA in accordance with federal law and regulations.

Not later than the fifth day after the date a child with a disability is enrolled in a school, DFPS must inform the appropriate school district if the child's foster parent is unwilling or unable to serve as a parent.

*Education Code 29.015; 19 TAC 89.1047*

#### **Appointment of Surrogate Parent for Certain Children**

These provisions apply to a child with a disability for whom:

1. DFPS is appointed as the temporary or permanent managing conservator of the child; and

2. The rights and duties of the department to make decisions regarding the child's education under Family Code 153.371 have not been limited by court order.

A school district must appoint an individual to serve as the surrogate parent for a child if the district is unable to identify or locate a parent for a child with a disability or the foster parent of a child is unwilling or unable to serve as a parent for the purposes of this subchapter.

[Education Code 29.0151\(a\)-\(b\)](#)

[Eligibility and Duties  
of a Surrogate  
Parent](#)

A surrogate parent appointed by a school district may not be an employee of ~~TEA~~the state, the school district, or any other agency involved in the education or care of the child; or have any interest that conflicts with the interests of the child.

A surrogate parent appointed by a district must:

1. Be willing to serve in that capacity;
2. Exercise independent judgment in pursuing the child's interests;
3. Ensure that the child's due process rights under applicable state and federal laws are not violated;
4. Complete a training program that complies with minimum standards established by agency rule within the time specified in Education Code 29.015(b);
5. Visit the child and the school where the child is enrolled;
6. Review the child's educational records;
7. Consult with any person involved in the child's education, including the child's:
  - a. Teachers;
  - b. Caseworkers;
  - c. Court-appointed volunteers;
  - d. Guardian ad litem;
  - e. Attorney ad litem;
  - f. Foster parent; and
  - g. Caregiver; and
8. Attend meetings of the child's ARD committee.

The district may appoint a person who has been appointed to serve as a child's guardian ad litem or as a court-certified volunteer advocate, as provided under Section 107.031(c), Family Code, as the child's surrogate parent.

[Education Code 29.0151\(c\)–\(d\)](#)

[Notice of Appointment](#)

[As soon as practicable after appointing a surrogate parent, a district shall provide written notice of the appointment to the child's educational decision-maker and caseworker as required under Education Code 25.007\(b\)\(10\)\(H\). Education Code 29.0151\(e-1\)](#)

[Failure to Properly Perform](#)

If a court appoints a surrogate parent for a child with a disability under Family Code 263.0025, and the school district determines that the surrogate parent ~~is failing to perform or~~ is not properly performing the duties, the district shall consult with ~~the DFPS and appoint~~ regarding whether another person should be appointed to serve as the surrogate parent for the child.

On receiving notice from a school district, if DFPS agrees with the district that the ~~the DFPS must promptly notify the court of the failure of the~~ appointed surrogate parent is unable or unwilling to properly perform the duties required under this section:-

- [1. DFPS shall promptly notify the court of the agreement; and](#)
- [2. As soon as practicable after receiving the notice, the court shall:](#)
  - [a. Review the appointment; and](#)
  - ~~a.~~ [b. Enter any orders necessary to ensure the child has a surrogate parent who performs the duties required under this provision.](#)

*Education Code 29.0151(f)–(g); 19 TAC 89.1047*

[JW 7/2/19: HB 1709, effective 6/10/2019. Changes to the text come from the bill. I also tried to break up the text with margins and citations.](#)

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**Parental Consent  
Not Required**

An employee of a district is not required to obtain the consent of a child's parent before the employee 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 self-contained classrooms and other special education settings in which a majority of the students in regular attendance are provided special education and related services and are assigned to one or more self-contained classrooms or other special education settings for at least 50 percent of the instructional day, 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*

“Incident” means an event or circumstance that:

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 following 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.

*Self-contained Classroom*

“Self-contained classroom” means a classroom on a regular campus (i.e., a campus that serves students in general education and students in special education), including a room attached to the classroom used for time-out, but not including a classroom that is a resource room instructional arrangement under Education Code ~~48.1022-154~~, in which a majority of the students in regular attendance are provided special education and related services for at least 50 percent of the instructional day and have one of the following instructional arrangements/settings described in the student attendance accounting handbook:

**JW 6/26/19: HB 3, conforming amendments, September 1, 2019. Section 3.028.**

1. Self-contained (mild/moderate/severe) regular campus;
2. Full-time early childhood (preschool program for children with disabilities) special education setting;
3. Residential care and treatment facility—self-contained (mild/moderate/severe) regular campus;
4. Residential care and treatment facility—full-time early childhood special education setting;

5. Off home campus—self-contained (mild/moderate/severe) regular campus; or
6. Off home campus—full-time early childhood special education 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 self-contained 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 layout 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 tenth 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 retention 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 (relating to Reporting Child Abuse and Neglect) and Family Code Chapter 261 [see FFG].

*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) (regarding child abuse reporting) and (k) (regarding 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 of this title (relating to 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 tenth 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 tenth 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	<p>These provisions apply to the placement, operation, and maintenance of a video camera in a self-contained classroom or other special education setting during the regular school year and extended school year services.</p> <p>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.</p> <p><i>Education Code 29.022(s)–(t)</i></p>
Exclusions	A district is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. <i>19 TAC 103.1301(c)</i>
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. <i>19 TAC 103.1301(e)</i>
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).
<i>Exhaustion of Administrative Remedies</i>	<p>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.</p> <p>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.</p>
<i>Proper Request</i>	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).

<i>Cost</i>	The commissioner will not consider the cost to the district of installing cameras or releasing video.
<i>Release Determination</i>	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).
<i>Timelines for Petition for Review</i>	<p>The following timelines are established for filing a petition for review:</p> <ol style="list-style-type: none"> <li>1. A petition for review shall be filed with the commissioner within ten 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) (relating to hearings brought under Education Code 7.057) and may include a request for expedited review.</li> <li>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 commissioner within ten calendar days of the district receiving notification from the commissioner of the appeal.</li> <li>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.</li> </ol>
<i>Expedited Review</i>	<p>A request for expedited review is governed by the following.</p> <ol style="list-style-type: none"> <li>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</li> </ol>

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 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 can be filed 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. Filing by facsimile 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 ten 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 affida-



mits 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 ten 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)*



A district shall establish a process for identifying and serving gifted and talented students and shall establish a program for those students in each grade level. [Under this provision, Aa](#) district may establish a shared services arrangement with other districts.

[A district shall adopt a policy regarding the use of funds to support the district's program for gifted and talented students.](#)

*Education Code 29.122*

[JW 7/2/19: HB 3, Sections 2.016 and 2.017, effective 6/12/2019, applies beginning 2019-20 school year.](#)

[JW 7/23/19: Joy and LRS requested I add "for this purpose" to the end of the shared service arrangement sentence. I think "under this provision" is less editorial, but accomplishes a similar function.](#)

#### **Definition**

"Gifted and talented student" means a child or youth who performs at or shows the potential for performing at a remarkably high level of accomplishment when compared to others of the same age, experience, or environment and who:

1. Exhibits high performance capability in an intellectual, creative, or artistic area;
2. Possesses an unusual capacity for leadership; or
3. Excels in a specific academic field.

*Education Code 29.121*

#### **Identification**

Students shall be identified as gifted/talented in accordance with a written policy that includes:

1. Provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in Education Code 29.121.
2. Assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of Gifted/Talented Students.
3. Data and procedures designed to ensure that students from all populations in a district have access to assessment and, if identified, to services provided for the gifted/talented program.
4. Provisions for final selection of students to be made by a committee of at least three local district educators who have received training in the nature and needs of gifted students.

5. Provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement.

*19 TAC 89.1*

**Learning  
Opportunities**

A district shall provide an array of learning opportunities for gifted/talented students in kindergarten through grade 12 and shall inform parents of the opportunities. Options shall include:

1. Instructional and organizational patterns that enable identified students to work together as a group, to work with other students, and to work independently.
2. A continuum of learning experiences that leads to the development of advanced-level products and performances.
3. In-school, and when possible, out-of-school options relevant to the student's area of strength that are available during the entire school year.
4. Opportunities to accelerate in areas of strength.

*19 TAC 89.3*

**Certification and  
Reporting to TEA**

A district shall annually certify to the commissioner of education that the district has established a program for gifted and talented students as required by Education Code Chapter 29, Subchapter D and that the program is consistent with the state plan.

If the commissioner determines that a district has failed to comply for a school year, the commissioner shall reduce the total amount of funding as described by Education Code 29.124(b). The commissioner may restore to a district all or part of the funding withheld if during the school year the district complies with the program requirements.

At the same time that a district makes the certification described above, the district shall report to the commissioner regarding the use of funds on the district's program for gifted and talented students as provided by State Board of Education rule.

Nothing in these provisions may be construed as limiting the number of students that a school district may identify as gifted and talented or serve under the district's program for gifted and talented students.

*Education Code 29.124*

**JW 7/9/19: HB 3, Section 2.018, effective 6/12/2019, applies beginning 2019-20 school year**

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**Note:** See DMA(LEGAL) for training requirements for teachers of ~~GIFTED AND TALENTED EDUCATION~~ [gifted and talented education](#).

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**Compensatory  
Education Allotment**

~~A district is entitled to an annual compensatory education allotment for each student:~~

- ~~1. Who is educationally disadvantaged; or~~
- ~~2. Who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside.~~

~~The number of educationally disadvantaged students is determined by averaging the best six months' numbers of students eligible for enrollment in the national school lunch program of free or reduced-price lunches for the preceding school year; or in the manner provided by commissioner rule.~~

~~A student receiving a full-time virtual education through the state virtual school network (TXVSN) [see EHDE] may be included in determining the number of educationally disadvantaged students if the school district submits to the commissioner of education a plan detailing the enhanced services that will be provided to the student and the commissioner approves the plan.~~

~~Education Code 42.152(a)-(b-1)~~

Use

JW 7/1/19: I deleted the comp education allotment details. HB turns TEC 42.152/48.104(a)-(c) into a more complicated math formula. I don't think we are the best resource for that formula.

All of the Use information in the prior statute has been repealed.

~~A district shall use its compensatory education allotment to fund supplemental programs and services designed to eliminate 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, as defined below, and all other students.~~

~~Specifically, a district may use the funds, other than an indirect cost allotment established by State Board rule, to meet the costs of providing a compensatory, intensive, or accelerated instruction program under Education Code 29.081, a disciplinary alternative education program (DAEP) under Education Code 37.008, or to support a Title I program, at a campus at which at least 40 percent of the students are educationally disadvantaged.~~

~~A district may also use allocated funds for:~~

- ~~1. A mentoring services program under Education Code 29.089;~~

~~2.—An accelerated reading instruction program under Education Code 28.006(g) for students at risk of dropping out of school as defined by Education Code 29.081(d) and (g);~~

~~3.—A program for treatment of students who have dyslexia or a related disorder, as required by Education Code 38.003, for students at risk of dropping out of school as defined by Education Code 29.081(d) and (g); and~~

~~A program under Education Code 29.081 specifically designed to serve students at risk of dropping out of school.~~

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)

Use

At least 55 percent of the district's compensatory education funds must be used to:

1. Fund supplemental programs and services designed to eliminate any disparity in performance on assessment instruments administered under Education Code Chapter 39, Subchapter B, ~~Chapter 39~~, or disparity in the rates of high school completion between:

a. Students who are educationally disadvantaged and students who are not educationally disadvantaged; and

b. Students at risk of dropping out of school, as defined below, and all other students; or

2. Support a program eligible under Title I of the Elementary and Secondary Education Act of 1965 [see AID], and its subsequent amendments, and by federal regulations implementing that Act.

Education Code 48.104(i), (k)

JW 7/1/19: HB 3, effective 9-1-2019.

Please look at HB 3, section 1.028 to review the information that I chose not to include. The amended TEC 48.104 includes information about commissioner review and commissioner sanctions that I chose to exclude. We don't include this information for the other allotments, i.e. the bilingual allotment, which we don't even mention in Policy. ~~Education Code 42.152(c), (c-1), (c-2)~~

JW 7/26/19: Deleted additional details from the above section:

The agency shall provide to districts a resource for use in determining the census block group in which a student resides.

In addition to other purposes for which funds for the compensatory education allotment may be used, the funds may also be used to provide child-care services or assistance with

child-care expenses for students at risk of dropping out of school as described by Education Code 29.081(d)(5) (a student who is pregnant or is a parent), or pay the costs associated with services provided through a life skills program in accordance with Education Code 29.085(b)(1) and (3)-(7) [see EHAD]. Education Code 48.104(i-1).

Kept the Use section. Although it's more funding detail than we provide for other policies, in looking at the policy as a whole, I think this sets up the context for later provisions, particularly the At-Risk section.

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 ~~and high school allotments~~ 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.

~~If a district is required to submit both a dropout prevention strategy plan and a plan to increase college enrollment [see GNC], the district must describe in its dropout prevention strategy plan how the activities identified in both plans will be coordinated. If a district is required to submit both a school improvement plan, due to failure to meet the required performance standard regarding dropout rates or completion rates, as well as a dropout prevention strategy plan, the district may request that its school improvement plan be used to satisfy both requirements.~~

~~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 or high school allotment to which the plan applies. The plan must meet the requirements at 19 Administrative Code 89.1701(e).~~

A district may not spend or obligate more than 25 percent of the district's compensatory education allotment ~~or high school 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; ~~19 TAC 89.1701~~*

**JW 7/1/19: HB 3, effective 9-1-2019. The TAC provision listed here has been repealed. I think that's where the deleted paragraph is from.**

**Definition of At-Risk Student**

"Student at risk of dropping out of school" includes each student who is under 26 years of age and who:

1. 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;

~~7. [JW 6/26/19: Made a couple minor changes above as I was reading through.](#)~~

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 a student of limited English proficiency, 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, as defined by 42 U.S.C. 11302 and its subsequent amendments [see FD]; or~~

~~12. [JW 6/14/19: SB 668, effective June 10, 2019.](#)~~

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; or-

~~13~~-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.

*Education Code 29.081(d)-(d-1)(1)*

**JW 6/13/19: SB 1746, effective June 2, 2019. Should I add more details about the penal institution? It's a really broad definition so it might be helpful.**

Regardless of the student's age, a student who participates in an adult education program provided under a high school diploma and industry certification charter school program is considered a "student at risk of dropping out of high school." *Education Code 29.081(d)(2)*

**JW 6/26/19: HB 1051, effective June 14, 2019.**

**I considered adding this into the list, but it's a little awkward because the sentence that sets up the list says a "student who 26 years of age or younger."**

**I did not include this program in EHBI because it appears to be a program managed by a nonprofit entity.**

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 ten percent of the number of students described above who received services from the district during the preceding school year. *Education Code 29.081(g)*

**Compensatory,  
Intensive, and  
Accelerated  
Instruction**

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)*

Accelerated  
Instruction

A district shall provide accelerated instruction to an enrolled student who has taken an end-of-course assessment instrument and has not performed satisfactorily or who is at risk of dropping out of school.

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)*

**JW 7/1/19: HB 3 amends (b-2), but not in a way that affects the paragraphs above.**

Each time a student fails to perform satisfactorily on an assessment instrument administered under Education Code 39.023(c), the district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area, using funds appropriated for accelerated instruction under Education Code 28.0211. Accelerated instruction may require participation of the student before or after normal school hours and may include participation at times of the year outside normal school operations.  
*Education Code 28.0217*

*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)*

**Dropout Recovery  
Education Programs**

A district may use a private or public community-based dropout recovery education program to provide alternative education programs for students at risk of dropping out of school. The program may be offered at a campus or through the use of an online program that leads to a high school diploma and prepares the student to enter the workforce. A campus-based dropout recovery education program must meet the criteria set forth at Education Code 29.081(e-1)(1)–(5). An online dropout recovery education program must meet the criteria set forth at Education Code 29.081(e-2)(1)–(8).

Students in attendance at a dropout recovery education program shall be included in a district's average daily attendance for funding purposes.

*Education Code 29.081(e)–(f)*

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 ten 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.](#)~~If a district provides an optional extended year program, it shall adopt a policy designed to lead to immediate reduction and ultimate elimination of student retention.~~ *Education Code 29.082(a); 19 TAC 105.1001*

[JW 7/1/19: I think this information is more relevant and consistent with the rest of the policy. Should I add the program criteria section like at OFYP or delete the program criteria section from OYFP? We should keep it consistent.](#)

**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 promoted to the next grade level. [Education Code 29.0821; 19 TAC 129.1029](#)

~~Program Criteria~~

~~An OFYP must meet the requirements set forth at Education Code 29.0821 and 19 Administrative Code 129.1029.~~

~~[Education Code 29.0821; 19 TAC 129.1029](#)~~

[JW 7/26/19: CVC suggest deletion because the material was repetitive.](#)

**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 ~~Section~~ 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 ~~Section~~ 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 ~~flexible school-day program (OFSDP)~~ for students, in accordance with 19 Administrative Code 129.1027. ~~Education Code 29.0822~~

A board must approve the application. The board must include the OFSDP as an item on the regular agenda for a board meeting providing options for public input concerning the proposed application before applying to operate an OFSDP. The application shall include the information described in 19 Administrative Code 129.1027.

*19 TAC 129.1027(c)*

**Program Criteria**

~~A district that meets application requirements may:~~

- ~~1. Provide flexibility in the number of hours each day a student attends;~~
- ~~2. Provide flexibility in the number of days each week a student attends;~~
- ~~3. Allow a student to enroll in less than or more than a full course load; or~~
- ~~4. Allow a student to enroll in a dropout recovery program in which courses are conducted online.~~

~~Except in the case of a course designed for a student who will be denied credit as a result of attendance requirements or enrolled in an online dropout recovery program, a course offered in a program under this section must provide for at least the same number of instructional hours as required for a course offered in a program that meets the required minimum number of minutes of operation under Education Code 25.081.~~

[Education Code 29.0822\(b\)-\(c\)](#) JW 7/1/19: [I think we should delete the extra details for this program. We don't provide the details of the other programs. But we have references to where districts can go for more information. Is there a reason we would include more information for this particular program?](#)

**Student Eligibility**

~~A district may provide an OFSDP for students who:~~

- ~~1. Have dropped out of school or are at risk of dropping out of school, as defined above at Definition of At-Risk Student;~~
- ~~2. Attend a campus that is implementing an innovative redesign;~~

- ~~3. Attend a community-based dropout recovery education program, as defined by Education Code 29.081(e-1) and (e-2);~~
- ~~4. Attend an early college high school under a plan approved by the commissioner; or~~
- ~~5. 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.~~

~~A student under 18 years of age is eligible to participate if the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation. A student that is 18 years of age or older or has otherwise attained legal status as an adult by reason of marriage or court order may agree in writing to participate.~~

~~19 TAC 129.1027(b); Education Code 29.0822(a)~~

~~A student who will be denied credit for one or more classes as a result of attendance requirements may enroll in a course in a OFSDP offered during the school year or during the period in which school is recessed for the summer to enable the student to earn class credit that the student would not otherwise be able to receive without retaking the class. Education Code 29.0822(e)~~

**Extracurricular Participation**

~~A student enrolled in an OFSDP may participate in a competition or activity sanctioned by the University Interscholastic League (UIL) only if the student meets all UIL eligibility criteria. 19 TAC 129.1027(f)~~

**Annual Performance Review**

~~Annually, each school district shall review its progress in relation to the performance indicators as required by 19 Administrative Code 129.1027(h). Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status. 19 TAC 129.1027(h)~~

**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*

**Accelerated Reading Instruction Program**

A district shall implement an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to each student in kindergarten, first grade, or second grade who is determined, on the basis of reading instrument results [see EKC], to be at risk for dyslexia or other reading difficulties. The district shall determine the form, content, and timing of the program.

A district shall provide additional reading instruction and intervention to each student given the seventh grade reading assessment [see EKC], as appropriate to improve the student's reading skills in the relevant areas identified through the assessment instrument.

**Limitation**

~~A district may implement an accelerated reading instruction program only if the commissioner certifies that funds have been appropriated during a school year for administering the program.~~

~~Education Code 28.006(f), (g), (g-1), (k)~~

**JW 7/1/19: HB 3 amended subsection (f) as follows:**

The agency shall ensure at least one reading instrument for each grade level for which a reading instrument is required to be administered under this section is available to school districts at no cost. [This section may be implemented only if funds are appropriated for administering the reading instruments. Funds, other than local funds, may be used to pay the cost of administering a reading instrument only if the instrument is on the list adopted by the commissioner.]

NOTE: The amendment to subsection (f) does not apply until the 2020-21 school year (see HB 3, Section 5.001). But I think we can delete it now. Let me know if you want to delay deletion.

**Intensive Program of Instruction**

State Assessments

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.

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 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]

Graduation  
Requirements

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*

**Maximum Allowable  
Indirect Cost**

~~A district may expend no more than the following percentages of the district's Foundation School Program (FSP) special allotments under Education Code Chapter 42, Subchapter C, for indirect costs related to the following programs:~~

- ~~1. No more than 48 percent for indirect costs related to:
  - a. Compensatory education,
  - b. Bilingual education and special language programs, and
  - c. Special education.~~



~~2. No more than 45 percent for indirect costs related to gifted and talented education programs.~~

~~3. No more than 42 percent for indirect costs related to career and technical education programs.~~

~~Beginning with the 2012–13 school year, a district may choose to use a greater indirect cost allotment under Education Code 42.151, .153, .154, and .156, to the extent the district receives less funding per weighted student in state and local maintenance and operations revenue than in the 2011–12 school year. The commissioner shall develop a methodology for a school district to make this determination and may require any information necessary to implement this rule.~~

~~19 TAC 105.11~~

**JW 7/1/19: Deleted Maximum Allowable Indirect Cost information. We don't need to go to this level of detail.**

### **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 twelfth 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.

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)*

[JW 7/1/19: Is this the best place for this? I added a cross reference and maybe that's enough, but it seems out of place.](#)

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**Note:** The terms English language learner and English learner are used interchangeably and are synonymous with the limited English proficiency (LEP) student as used in Education Code Chapter 29. *19 TAC 89.1203*

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**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)*

**State Policy** It is the policy of the state that every student who has a primary language other than English and who is identified as an English learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program. *19 TAC 89.1201(a)*

**Definitions** “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” means a state-approved bilingual program model in accordance with Education Code 29.066.

“English learner” is a student who is in the process of acquiring English and has another language as the primary language.

“Parent” includes a legal guardian of a student.

*Education Code 29.052; 19 TAC 89.1203*

**District  
Responsibility**

Each district shall:

1. Identify English learners based on criteria established by the state;
2. Provide bilingual education and ESL programs as integral parts of the general program;
3. Seek appropriately certified teaching personnel to ensure that English learners are afforded full opportunity to master the essential knowledge and skills; and

4. Assess achievement for essential knowledge and skills in accordance with Education Code Chapter 29 to ensure accountability for English learners and the schools that serve them.

*19 TAC 89.1201(a)*

**Identification of LEP Students**

Within the first four weeks of the first day of school, the language proficiency assessment committee (LPAC) shall determine and report to the board the number of LEP 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 TEA before November 1 each year. *Education Code 29.053(b)*

Language Proficiency Assessment Committees (LPAC)

Each district that is required to offer bilingual and special language programs shall, by local board policy, establish an LPAC. A district shall establish and operate a sufficient number of LPACs to enable them to discharge their duties within four weeks of the enrollment of English learners. A district shall have on file policy and procedures for the selection, appointment, and training of members of the LPAC.

*Membership of LPAC*

The LPAC shall include:

1. An appropriately certified bilingual educator (for students served through a bilingual education program);
2. An appropriately certified English as a second language (ESL) educator (for students served through an ESL program);
3. A parent of an English learner participating in a bilingual or ESL program; and
4. A campus administrator.

A district may add other trained members to the committee.

No parent serving on the LPAC shall be an employee of the school 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 and training of all members, including the parents, of the LPAC.

*Education Code 29.063(a), (b); 19 TAC 89.1220(a)–(f)*

*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

A district shall administer only one home language survey to each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through grade 12. The district shall require that the survey be signed by the student's parents if the student is in prekindergarten through grade 8, or by the student if the student is in grades 9 through 12. The original copy of the survey shall be kept in the student's permanent record.

The home language survey shall be administered in English, Spanish, and Vietnamese. For students of other language groups, the home language survey shall be translated into the primary language whenever possible.

The home language survey shall contain the following questions:

1. "What language is spoken in the child's home most of the time?"
2. "What language does the child speak most of the time?"

If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with ~~19 Administrative Code 89.1225 in the 2018–19 school year and~~ 19 Administrative Code 89.1226 in the 2019–20 school year and thereafter.

19 TAC 89.1215, .122~~6~~5

**JW 7/8/19: July 15, 2018, 43 TexReg 4731. The rule was from last summer, but the new Code applies this school year.**

LEP Classification

The LPAC may classify a student as LEP 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

Within ten days of the LPAC's classification of a student as LEP, the LPAC shall give written notice to the student's parent. *Education Code 29.056(d)*

The district shall notify the parent or legal guardian in English and in the parent or legal guardian's primary language that their child has been classified as an English learner and recommended for placement in the required bilingual education or ESL program. The district shall comply with the parent notification requirements described by 19 Administrative Code 89.1040(a).

The entry or placement of a student in the bilingual education or ESL program must be approved in writing by the student's parent or legal guardian.

*19 TAC 89.1040(a); Education Code 29.056(a)*

Pending parent approval of an English learner's entry into a bilingual program recommended by the LPAC, a district shall place the student in the recommended program. Only English learners with parent approval who are receiving services will be included in the bilingual education allotment.

A district may identify, exit, or place a student in a program without written approval of the student's parent or guardian if:

1. The student is 18 years of age or has had the disabilities of minority removed;
2. The parent or legal guardian 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), .1240(a)*

Participation of  
Non-LEP 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 students who are not English learners shall not exceed 40 percent of the number of students enrolled in the program district-wide. *19 TAC 89.1233(c)*

Students with  
Disabilities

Districts shall implement assessment procedures that differentiate between language proficiency and disabling conditions in accordance with 19 Administrative Code Chapter 89, Subchapter AA. The district shall establish placement procedures that ensure that placement in a bilingual education or ESL program is not refused solely because the student has a disability. LPAC members shall meet in conjunction with admission, review, and dismissal (ARD) committee members to review and provide recommendations about the education needs of each English learner who qualifies for services in the special education program. [See EHBAB] *19 TAC 89.1230*

**Bilingual and ESL  
Programs**

Each district with an enrollment of 20 or more LEP students in any language classification in the same grade level district-wide shall offer a bilingual education or special language program, as follows:

1. Prekindergarten through elementary grades: a district shall provide a bilingual education program by offering dual language instruction using one of the four bilingual program models described in 19 Administrative Code 89.1210(c). Elementary grades shall include at least prekindergarten through grade 5; sixth grade shall be included when clustered with the elementary grades. [See Bilingual Education Program Models, below]
2. Post-elementary through grade 8: a district shall offer bilingual education, ESL, or other transitional language instruction approved by TEA.
3. Grades 9 through 12: a district shall provide ESL instruction by offering an ESL program using one of the two models described at 19 Administrative Code 89.1210(g). [See ESL Program Models, below]

*Education Code 29.053(c), (d); 19 TAC 89.1205*

The district shall provide an ESL program to all English learners for whom a district is not required to offer a bilingual education program, regardless of the students' grade levels and primary 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]. *19 TAC 89.1205(c)*



A district is authorized to establish a bilingual education program even if the district has fewer than 20 English learners in any language classification in the same grade level district-wide and are not required to do so under the law. A district is also authorized to establish bilingual education programs at grade levels at which the district is not required under the law to establish bilingual programs. 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 education exceptions and ESL waivers under 19 Administrative Code 89.1207. If a program other than bilingual education must be used in kindergarten through the elementary grades, documentation for the exception must be filed with and approved by TEA. *Education Code 29.054; 19 TAC 89.1027*

A district that is unable to employ a sufficient number of teachers, including part-time teachers, who meet the certification requirements for bilingual education and ESL program shall apply for an exception or waiver to the certification requirement on or before November 1. *19 TAC 89.1245(b)*

Program Design

A district that is required to offer a bilingual education or ESL program shall provide each English learner the opportunity to be enrolled in the required program at his or her grade level.

A district's bilingual education program shall comply with the program content and design requirements of 19 Administrative Code 89.1210. A district shall provide for ongoing coordination between the ESL program and the regular educational program.

*19 TAC 89.1210*

A bilingual education program shall be a full-time program of dual language instruction. An ESL program shall be an intensive program of instruction in English. *19 TAC 89.1210(a)(1)–(a)(2)*

English learners shall participate with their English-speaking peers in general education classes provided in subjects such as art, music, and physical education. A district shall ensure students enrolled in the bilingual or ESL program have a meaningful opportunity to participate with other students in all extracurricular activities. Elective courses may be taught in a language other than English. *Education Code 29.055, .057(b); 19 TAC 89.1210(f)*

*Bilingual  
Education  
Program Models*

The bilingual education program 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 as English learners through English instruction by a teacher appropriately certified in ESL under Education Code 29.061(c), through English language arts and reading, mathematics, science, and social studies. The goal of content-based ESL is for English learners to attain full proficiency in English in order to participate equitably in school. This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading, mathematics, science, and social studies.
2. An ESL/pull-out program model is an English acquisition program that serves students identified as English learners through English instruction provided by an appropriately certified ESL teacher under Education Code 29.061(c), through English language arts and reading. The goal of ESL pull-out is for English learners to attain full proficiency in English in order to participate equitably in school. This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading. Instruction shall be provided by the ESL teacher in a pull-out or inclusionary delivery model.

*19 TAC 89.1210(d)*

*Dual Language  
Immersion Program*

A district may adopt a dual language immersion program (DLIP) for students enrolled in elementary school grades. *Education Code 28.005(c), .0051(c)*

*Implementation*

Program implementation shall:

1. Begin at prekindergarten or kindergarten, as applicable;
2. Continue without interruption incrementally through the elementary grades; and

3. Consider expansion to middle school and high school whenever possible.

*19 TAC 89.1227(e)*

*Minimum  
Requirements*

A DLIP shall:

1. Address all curriculum requirements specified at 19 Administrative Code Chapter 74, Subchapter A (Required Curriculum) to include foundation and enrichment areas, English language proficiency standards, and college and career readiness standards.
2. Be a full-time program of academic instruction in English and another language.
3. Provide equitable resources in English and the additional program language whenever possible.
4. Provide a minimum of 50 percent of instructional time in the language other than English for the duration of the program.
5. Be developmentally appropriate and based on current best practices identified in research.

*19 TAC 89.1227*

*Two-Way DLIP  
Enrollment*

Student enrollment in a two-way DLIP is optional for English proficient 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. A district must obtain written parental approval for English proficient students through a district-developed process.

A district implementing a two-way DLIP shall develop a policy on enrollment and continuation for students in the program. The policy must address:

1. Eligibility criteria;
2. Program purpose;
3. The district's commitment to providing equitable access to services for English learners.
4. Grade levels in which the program will be implemented;
5. Support of program goals as stated in 19 Administrative Code 89.1210 (Program Content and Design); and
6. Expectations for students and parents.

*19 TAC 89.1228*

<i>School District Recognition</i>	<p>A district may recognize one or more of its schools that implement an exceptional DLIP if the school meets all of the following criteria:</p> <ol style="list-style-type: none"><li>1. The school must meet the minimum requirements stated in 19 Administrative Code 89.1227.</li><li>2. The school must receive an acceptable performance rating in the state accountability system.</li></ol> <p>The school must not be identified for any stage of intervention for the district's bilingual and/or ESL program under the performance-based monitoring system.</p>
<i>Student Recognition</i>	<p>A student participating in a DLIP or any other state-approved bilingual or ESL program may be recognized by the program and the board by earning a performance acknowledgement in accordance with 19 Administrative Code 74.14. [See EIF]</p> <p><i>19 TAC 89.1229</i></p>
Facilities	<p>Bilingual education 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 concentrate the programs at a limited number of facilities within the district. Recent immigrant English learners shall not remain enrolled in a newcomer center for longer than two years. <i>Education Code 29.057; 19 TAC 89.1235</i></p>
Cooperation Among Districts	<p>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.</p> <p>A district may allow a nonresident LEP 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.</p> <p><i>Education Code 29.059; 19 TAC 89.1205(e)</i></p>
Documentation	<p>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. <i>19 TAC 89.1220(l)</i></p> <p>For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the home language survey. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the</p>

student's home language survey shall be made. If attempts to obtain the student's home language survey from the sending district are unsuccessful, the identification process shall begin while attempts to contact the sending district for records continue throughout the four-week testing and identification period. *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 LEP 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 established 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 Program**

A district may establish on a full- or part-time basis other summer school, extended day, or extended week bilingual or special language programs for LEP students and may join with other districts in establishing such programs.

Neither the summer program nor the other programs may substitute for the program to be provided during the regular school year.

*Education Code 29.060*

**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)*

Teachers assigned to ESL programs must be appropriately certified for ESL. *Education Code 29.061(c)*

A district that is unable to hire a sufficient number of teachers with bilingual teaching or ESL certificates shall request the activation of the appropriate permits in accordance with 19 Administrative Code Chapter 230. A district that is unable to employ a sufficient number of teachers to meet the certification requirements shall apply to the commissioner for an exception or waiver to the required program. [See Exceptions and Waivers, above] *Education Code 29.054; 19 TAC 89.1207(a)–(b), .1245(a)*

**LEP Students and  
State Assessments**

In kindergarten–grade 12, a LEP 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 a LEP 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)*

**Notice to Parents** A district shall give written notification to the student's parent or legal guardian of a student's reclassification as English proficient and his or her exit from the bilingual or ESL program and acquire written approval. Students meeting exit requirements may continue in the bilingual education or ESL program with parental approval but are not eligible for inclusion in the bilingual education allotment.  
*19 TAC 89.1240(b)*

**Post-Exit Monitoring and Reenrollment** The language proficiency assessment committee 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 conduct a bilingual education or ESL program shall conduct an 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.

A district shall report to parents the progress of their child in acquiring English as a result of participation in the program offered to English learners.

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 English learners. [See BQB]

*19 TAC 89.1265*



**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	<p>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 established 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. <i>19 TAC 75.1022</i></p> <p>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.</p>
Program Evaluation	<p>A district shall annually evaluate its career and technical education programs. <i>19 TAC 75.1025</i></p>
Special Populations	<p>Members of special populations shall be provided career and technical services in accordance with all applicable federal and state laws, regulations, and rules. <i>19 TAC 75.1023(a)</i></p>
<i>Definition</i>	<p>For purposes of this section, a “member of a special population” includes:</p> <ol style="list-style-type: none"><li>1. An individual with a disability [see EHBAB];</li><li>2. An individual from an economically disadvantaged family, including low-income youth and adults;</li><li>3. An individual preparing for nontraditional fields;</li><li>4. A single parent, including a single pregnant woman;</li><li>5. An out-of-workforce individual;</li><li>6. An English learner;</li><li>7. A homeless individual described in Section 725 of the McKinney-Vento Homeless Assistance Act;</li><li>8. Youth who are in, or have aged out of, the foster care system; and</li><li>9. Youth with a parent who is a member of the armed forces and is on active duty.</li></ol> <p><i>20 U.S.C. 2302(29)</i></p>
Students with Disabilities	<p>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.</p>

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 (relating to 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. Skills USA.

*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 purposes of state accountability [see AIA], administered while the student is enrolled in a school district.

A student may not receive more than one subsidy under ~~this section~~ 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 a student's certification examination under these provisions. Education Code 48.156

**JW 7/2/19: HB 3, Section 2.031 and 1.036, effective 6/12/2019 and 9/1/2019. We did not previously include TEC 21.190. HB 3 amended the statute. Do you think this material is appropriate for the PRM?**

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**Note:** Only districts that identify 15 or more eligible students are required to provide prekindergarten programs.

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**Tuition-Free**

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.

**Exemption**

~~A district may apply to the commissioner of education (“commissioner”) for an exemption from the requirement that it provide a free prekindergarten program if the district would be required to construct classroom facilities in order to provide the program.~~

**JW 7/2/19: Moved the exemption since it is broader after HB 3.**

**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:

1. Is unable to speak and comprehend the English language;
2. Is educationally disadvantaged;
- ~~3. Is homeless [see FD], as defined by federal law [see FD(LEGAL)], 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;~~

**~~3.~~ JW 6/14/19: SB 668, effective June 10, 2019.**

4. Is 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. Is 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. Is 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
7. Is 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.

[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.](#)

[JW 6/13/19: SB 1679, applies beginning with the 2019-20 school year, effective 9/1/19. If I had time, I would break apart this section with more citations.](#)

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\(a\)-\(b\), \(f\)-\(g\)](#)

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 Basis or  
Full Day

A free prekindergarten class ~~shall~~ 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 free 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 29.153, including all or any part of the required high-quality prekindergarten program requirements, 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.

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 solicit and consider proposals for partnerships to provide those classes with community-based child-care providers who:

1. Are a Texas Rising Star Program provider with a three-star certification or higher;
2. Are nationally accredited;
3. Are a Head Start program provider;
4. Are a Texas School Ready! participant; or
5. Meet the requirements under Education Code 29.1532.

Education Code 29.153(g)

**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) (regarding PEIMS data for prekindergarten



programs). A district must submit its proposed tuition rate to the commissioner for approval.

*Education Code 29.1531*

**JW 7/2/19: The above changes come from HB 3, Section 2.019, effective 6/12/2019.**

### **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 Department of Family and Protective Services under Human Resources Code 42.042. *Education Code 29.1532(b)*

**JW 7/2/19: I moved these up closer to the provisions regarding partnering to provide new programs and when a district is required to provide a program.**

### **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.

**High-Quality  
Prekindergarten  
Grant Program**

*Education Code 28.002(l)*

~~From funds appropriated for that purpose, the commissioner shall establish a grant funding program under which funds are awarded to districts to implement a prekindergarten grant program under Education Code Chapter 29, Subchapter E-1 and 19 Administrative Code 102.1003.~~

~~A district may participate in and receive funding under the program if the district meets all program standards required under Subchapter E-1. A program is subject to any other requirements imposed by law that apply to a prekindergarten program.~~

*Education Code 29.165*

JW 7/2/19: HB 3, effective 9/1/2019, repealed TEC 29.166 and TEC 29.165. I also deleted the related TAC provisions on prekindergarten funding. Also, the HQ prek program has removed the "grant references."

~~A district that receives funding under this grant shall maintain locally and provide at TEA's request the necessary documentation to ensure fidelity of high-quality prekindergarten program implementation. 19 TAC 102.1003(k)~~

~~All eligible districts may receive grant funding for each qualifying student in average daily attendance in a high-quality prekindergarten program in the district. A school district that receives the funding may use the funding only to improve the quality of the district's prekindergarten programs. Funding for each qualifying student in attendance for the entire instructional period on a school day shall not exceed \$1,500. Education Code 29.166; 19 TAC 102.1003(a), (f)~~

~~To be eligible to receive grant funding under the program, a district shall:~~

**Eligibility for  
Funding**

- ~~1. Implement a curriculum for a high-quality prekindergarten grant program that addresses all of the Texas Prekindergarten Guidelines (updated 2015) in the domains identified in 19 Administrative Code 102.1003(c).~~
- ~~2. Measure the progress of each student in meeting the recommended end-of-prekindergarten year outcomes identified in the Texas Prekindergarten Guidelines, and the preparation of each student for kindergarten using a kindergarten readiness instrument for reading as described in Education Code 28.006.~~

- ~~3.— Develop, implement, and make available on the district or campus website a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. [See Family Engagement Plan, below]~~

~~19 TAC 102.1003(c), (d), (f)~~

#### Qualifying Students

~~A district receiving funds under the program must provide educational services to qualifying students. A student qualifies for additional funding if the student is four years of age on September 1 of the year the student begins the program and:~~

- ~~1.— Is unable to speak and comprehend the English language;~~
- ~~2.— Is educationally disadvantaged;~~
- ~~3.— Is a homeless child, as defined by 42 U.S.C. § 11434a, 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 of the child;~~
- ~~4.— Is 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.— Is 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; or~~
- ~~6.— Is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by Family Code 262.201.~~

~~Education Code 29.153(b); 19 TAC 102.1003(b)~~

#### Curriculum Requirements

"Program" means a high quality prekindergarten program for eligible children who are at least four years of age required to be provided free of tuition or fees.

A district shall select and implement a curriculum for a prekindergarten ~~grant~~ program that:

1. Includes the prekindergarten guidelines established by [the Texas Education Agency \(TEA\)](#);
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.

~~—The curriculum must address all of the Texas Prekindergarten Guidelines (updated 2015) in the domains identified in 19 Administrative Code 102.1003(c).~~

~~In a format prescribed by TEA, a district that receives funding under this grant shall report:~~

~~1. The curriculum used in the high-quality prekindergarten program classes as required by 19 Administrative Code 102.1003(c);~~

~~2. A description and the results of each prekindergarten instrument used in the high-quality prekindergarten program classes as required by 19 Administrative Code 102.1003(d);~~

~~3. A description of each kindergarten readiness instrument used in the district to measure the effectiveness of the district's high-quality prekindergarten program classes as required by 19 Administrative Code 102.1003(d); and~~

~~4. The results for at least 95 percent of the district's kindergarten students on the kindergarten readiness instrument.~~

~~Education Code 29.164, .167(a); 19 TAC 102.1003(c), (g)~~

**JW 7/2/19: HB 3, Section 2.026, effective 6/12/2019. I deleted the TAC it still references and discusses a grant program.**

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;
- ~~4. A graduate or undergraduate degree in early childhood education or early childhood special education;~~
- ~~5. Documented completion of the Texas School Ready Training Program; or~~

4. Be employed as a prekindergarten teacher in a district that has received approval from the commissioner for the district's prekindergarten-specific instructional training plan that the teacher uses in the teacher's prekindergarten classroom~~ensured that;~~ or

~~6-5.~~ An equivalent qualification.

~~a.~~ ~~Prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines that were approved prior to 2015 in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period;~~

~~b.~~ ~~Teachers who have not completed training required above prior to assignment in a prekindergarten class complete:~~

~~(1)~~ ~~The first 30 hours of 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines (updated 2015) in addition to other relevant topics related to high-quality prekindergarten before the end of the 2016–17 school year; and~~

~~(2)~~ ~~Complete the additional hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom; and~~

~~e-6.~~ ~~At least half of the hours required above shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches.~~

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 school district must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for each 11 students.

*Education Code 29.167; ~~19 TAC 102.1003(e), (i)~~*

JW 7/2/19: I deleted the TAC even though it provided additional helpful details. The TAC was issued under prior and repealed sections and references the prior grant funding. When TEA reissues the TAC rules, we will probably want to update the policy.

Family Engagement  
Plan

A district shall develop and implement a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. [The family engagement plan must be based on family engagement strategies established by TEA.](#)

~~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 must be based on family engagement strategies established by TEA as set out in 19 Administrative Code 102.1003(f).~~

~~Education Code 29.168(a); 19 TAC 102.1003(f)~~

**JW 7/2/19: Same as above.**

Program Evaluation

A school district shall:

1. Select and implement appropriate methods for evaluating the district's program classes by measuring student progress; and
2. Make data from the results of program evaluations available to parents.

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.

~~Education Code 29.169; 19 TAC 102.1003(h)~~

Eligible Private  
Providers

A district ~~participating in the grant program~~ [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.

**JW 7/2/19: HB 3, effective 6/12/2019. Section 2.029.**

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 school 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 pre-kindergarten 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.

*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 school 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)*

[JW 7/2/19: This information was moved up in the policy. Note: HB 2325 amended this section of the Government Code, but it doesn't affect the PRM.](#)

**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 Department of Family and Protective Services under Human Resources Code 42.042. *Education Code 29.1532(b)*~~



<b>Mandatory Recognition Dates</b>	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. <i>Gov't Code 662.051</i>
Hydrocephalus Awareness Month	September: Hydrocephalus Awareness Month, to: <ol style="list-style-type: none"><li>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</li><li>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.</li></ol> Hydrocephalus Awareness Month shall be regularly observed by appropriate activities in public schools to increase awareness of hydrocephalus. <i>Gov't Code 662.106</i>
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. <i>Gov't Code 662.050</i>
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] <i>Education Code 25.0821</i>
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. <i>Pub. L. 108-447 (2004)</i>
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. <i>Education Code 29.907</i>
<i>Appropriate Instruction</i>	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.  <i>19 TAC 74.33(a)</i>
<i>Recitation</i>	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: <ol style="list-style-type: none"><li>1. Whose parent or guardian submits to the district a written request that the student be excused;</li><li>2. Who, as determined by the district, has a conscientious objection to the recitation; or</li><li>3. Who is the child of a representative of a foreign government to whom the United States government extends diplomatic immunity.</li></ol> <i>19 TAC 74.33(b), .36</i>
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'ernment\* Code 662.071](#)

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

**JW 7/2/19: HB 3435, effective 6.10.2019.**

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 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*

**JW 7/2/19: I think that's supposed to be margin 2, since it's under margin for mandatory observances.**

Holocaust  
Remembrance  
Week

In this section, "Holocaust" has the meaning assigned by Government Code 449.001.

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 and Genocide Commission.

*Education Code 29.9072*

**JW 7/2/19: SB 1828, effective 6/10/2019. Applies beginning 2019-20 school year.**

**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 662.0675*

**JW 7/6/19: HB 4170, effective 9/1/2019, section 21.001,**

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*

**Character Education**

~~A district may provide a character education program, which must:~~

~~1. Stress positive character traits, such as:~~

~~a. Courage;~~

~~b. Trustworthiness, including honesty, reliability, punctuality, and loyalty;~~

~~c. Integrity;~~

~~d. Respect and courtesy;~~

~~e. Responsibility, including accountability, diligence, perseverance, and self-control;~~

~~f. Fairness, including justice and freedom from prejudice;~~

~~g.—Caring, including kindness, empathy, compassion, consideration, patience, generosity, and charity;~~

~~h.—Good citizenship, including patriotism, concern for the common good and the community, and respect for authority and the law; and~~

~~i.—School pride;~~

~~2.—Use integrated teaching strategies; and~~

~~3.—Be age appropriate.~~

~~In developing or selecting a character education program under this section, a school 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 JW 6/13/19: Now that this instruction is required, I've moved this information to EHAA. HB 1026, effective 6/14/2019.](#)

## 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 of-fices 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 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. 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*

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**Note:** For information on dual credit courses available through the [Texas Virtual School Network](#)<sup>1</sup> (TXVSN), see EHDE.

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### 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.

#### Agreements

Any agreement, including a memorandum of understanding or articulation agreement, between a school district and public institution of higher education to provide a dual credit program must:

1. Include specific program goals aligned with statewide goals developed jointly by TEA and the THECB;
2. Establish common advising strategies and terminology related to dual credit and college readiness;
3. Provide for the alignment of endorsements offered by the district [Ssee EIF] and dual credit courses offered under the agreement that apply towards those endorsements, with post-secondary pathways and credentials at the institution and industry certifications;
4. Identify tools, including tools developed by TEA, THECB, or the Texas Workforce Commission, to assist school counselors, students, and families in selecting endorsements offered by the district and dual credit courses offered under the agreement;
5. Establish, or provide a procedure for establishing, the course credits that may be earned under the agreement, including by developing a course equivalency crosswalk or other method for equating high school courses with college courses and identifying the number of credits that may be earned for each course completed through the program;

- ~~4.6.~~ Describe the academic supports and, if applicable, guidance that will be provided to students participating in the program;
- ~~2.7.~~ Establish the district's and the institution's respective roles and responsibilities in providing the program and ensuring the quality and instructional rigor of the program;
8. State 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 or textbooks for students participating in the program; ~~and~~
- ~~3.9.~~ Require the district and the institution to consider the use of free or low-cost open educational resources in courses offered under the program; and
- 4.10. Be posted each year on the district's and the institution's respective websites.

*Education Code 28.009; 19 TAC 4.84*

JW 6/13/19: HB 3650, effective 6/10/2019, adding #9. SB 1276, effective May 28, 2019, adding 3-5. Both bills amend 28.009(b-2). I think they can be reconciled to both be read.

Do we need to note the following? Both SB 1276 and HB 3650 contain this provision: "Section 28.009(b-2), Education Code, as amended by this Act, applies only to an agreement to provide a dual credit program entered into or renewed on or after September 1, 2019. An agreement to provide a dual credit program entered into or renewed before September 1, 2019, is governed by the law as it existed at the time the agreement was entered into or renewed, and the former law is continued in effect for that purpose."

Note: HB 4170 does not affect what is currently cited here: Subsection (b-1), Section 28.009, Education Code, as added by Chapter 729 (S.B. 1091), Acts of the 85th Legislature, Regular Session, 2017, is redesignated as Subsection (b-3), Section 28.009, Education Code.

Also, 19 TAC 4.84 was amended with dual credit agreement requirements, effective May 22, 2019, 44 TexReg 2452. The amendments added subsection (c), which listed some, but not all of the agreement requirements. I've added the cite to the TEC cite, but I did not amend the text.

### 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
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**

Definitions

For purposes of the following provisions, “college” means any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined by Education Code 61.003.

“Dual credit” means the system under which an eligible high school student enrolls in college course(s) and receives credit for the course(s) from both the college and high school.

*19 TAC 4.83(4), (7)*

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 academic dual credit courses and workforce education dual credit courses as permitted by 19 Administrative Code 4.85(b).

To be eligible for enrollment in a dual credit course offered by a public college, students must meet all the college's regular prerequisite requirements designated for that course (e.g., minimum score on a specified placement test, minimum grade in a specified previous course, etc.).

An institution may impose additional requirements for enrollment in courses for dual credit that do not conflict with this section.

An institution is not required, under the provisions of this section, to offer dual credit courses for high school students.

*19 TAC 4.85(b)*

**JW 7/9/19: This section was also amended in the TAC, but our first paragraph is broad enough to encompass the changes.**

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 428.005(q)* [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 428.00752(a)*

**JW 7/2/19: HB 3, effective 9-1-2019, Section 1.015.**

Reporting Off-  
Campus  
Programs

A ~~district~~ 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 (~~relating to~~ 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

**JW 7/8/19: Statutory tightening.**

Time that a student participates in an off-campus instructional program approved by the commissioner under Education Code ~~48.007(2-0052)~~(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* ~~428.005~~(h)

**JW 7/2/19: HB 3, effective 9/1/2019.**

**Partnership-Dual  
Credit Agreement**

The board of a district and the governing board of a college must approve any dual credit partnership between the schools before offering such courses.

The ~~partnership-dual credit~~ agreement must 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 gathering;
7. Academic policies and student support services;
8. Transcribing of credit;
9. Funding; and
10. Defined sequences of courses, where applicable.

19 TAC 4.84-.85

**JW 7/9/19: Minor TAC changes. Amended to be effective May 22, 2019, 44 TexReg 2452.**

**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. Transcribing 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 (~~relating to~~ 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*

An institution of higher education shall use the Texas Success Initiative (TSI) Assessment offered by the College Board as the only THECB-approved assessment instrument. *19 TAC 4.56*

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*

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<sup>1</sup> Texas Virtual School Network: <http://www.txvsn.org/>

**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*

**Texas Virtual School Network**

The TXVSN is a state-led initiative for online learning authorized by Education Code Chapter 30A. The TXVSN is a partnership network administered by TEA in coordination with regional education service centers (ESCs), Texas public school districts and charter schools, institutions of higher education, and other eligible entities.

The TXVSN is comprised of two components—the online school (OLS) program and the statewide course catalog.

*19 TAC 70.1001(4)*

**“Online School (OLS) Program”**

“Online School (OLS) program” is a full-time, virtual instructional program that is made available through an approved course provider and is designed to serve students in grades 3–12 who are not physically present at school. *19 TAC 70.1001(7)*

A TXVSN OLS may serve students in grades 3–12 but may not serve students in kindergarten–grade 2.

A school district that operates a TXVSN OLS that serves students in full-time virtual instruction shall, prior to the start of each academic year, notify TEA of grade levels to be served and the total number of students to be served during that academic year. A school district may not add grade levels after the start of the school year.

A TXVSN OLS or a school district wishing to add additional grade levels to its online program shall certify that the OLS has courses sufficient to comprise a full instructional program for each additional grade level to be served by the OLS prior to serving that grade level.

School districts approved to serve as TXVSN OLSs shall follow the TEA procedures related to obtaining a campus number for the virtual campus through which they serve their TXVSN OLS students.

School districts serving as TXVSN OLSs must follow all requirements in 19 Administrative Code 70.1011.

*19 TAC 70.1011*

**“Statewide Course Catalog”** “Statewide course catalog” is a supplemental online high school instructional program available through approved providers. *19 TAC 70.1001(10)*

**Course Providers** A TXVSN course provider is an entity that provides an electronic course through the TXVSN. Course providers include TXVSN OLSs and providers in the statewide course catalog. *19 TAC 70.1001(8)*

**Electronic Course** “Electronic course” means an educational course in which:

1. Instruction and content are delivered primarily over the Internet;
2. A student and teacher are in different locations for a majority of the student’s instructional period;
3. Most instructional activities take place in an online environment;
4. The online instructional activities are integral to the academic program;
5. Extensive communication between a student and a teacher and among students is emphasized; and
6. A student is not required to be located on the physical premises of a school district or open-enrollment charter school.

An electronic course is the equivalent of what would typically be taught in one semester. For example: English IA is treated as a single electronic course and English IB is treated as a single electronic course.

*Education Code 30A.001(4); 19 TAC 70.1001(1)*

**OLS Eligibility** To be eligible to serve as a TXVSN OLS, a school district shall:

1. Have a current accreditation status of Accredited under 19 Administrative Code 97.1055 (relating to Accreditation Status);
2. Be rated acceptable under Education Code 39.054;

3. Be rated at the Standard Achievement level or higher under the state financial accountability rating system under 19 Administrative Code 109.1001 (relating to Types of Financial Accountability Ratings);
4. Have met statutory requirements for timely submission of annual audit and compliance reports, Public Education Information Management System (PEIMS) reports, and timely deposits with the Teacher Retirement System, with all records and reports reflecting satisfactory performance;
5. Be in good standing with other programs, grants, and projects administered through TEA; and
6. Have been approved to operate a TXVSN OLS as of January 1, 2013.

*19 TAC 70.1009(a)*

*Statewide Course  
Catalog Provider  
Eligibility*

To be eligible to serve as a course provider in the TXVSN statewide course catalog, a district must be rated acceptable under Education Code 39.054. A Texas school district may provide an electronic course through the TXVSN to a student enrolled in that district or school, a student enrolled in another school district or school in the state, or a student who resides in Texas who is enrolled in a school other than a public school district or charter school. *19 TAC 70.1007(a)*

*General  
Requirements*

TXVSN course providers shall:

1. Provide the TXVSN receiver district in which each TXVSN student is enrolled with written notice of a student's performance in the course at least once every 12 weeks;
2. Provide the TXVSN receiver district in which each TXVSN student is enrolled with written notice of a student's performance at least once every three weeks if the student's performance in the course is consistently unsatisfactory, as determined by the TXVSN course provider;
3. Notify students in writing upon enrollment to participate in the TXVSN course with specific dates and details regarding enrollment;
4. Meet all federal and state requirements for educating students with disabilities;
5. Provide a contingency plan for the continuation of instructional services to all TXVSN students allowing them to complete their TXVSN courses in the event that the contract or agreement through which the electronic courses are provided

are terminated or the TXVSN courses become unavailable to students;

6. Ensure a maximum class size limit of 40 students in a single section of a course and ensure that the class size does not exceed the maximum allowed by law, as applicable, whichever is less; and
7. Meet all reporting requirements established by TXVSN central operations, including timely submission of student performance reports, course completion results, catalog data, data required to verify instructor qualifications, and all data necessary for the TXVSN Informed Choice Report required under 19 Administrative Code 70.1031 (relating to Informed Choice Reports).

*19 TAC 70.1007(c)*

*Receiver District Requirements*

A district is eligible to serve as a receiver district in the TXVSN statewide course catalog. Each TXVSN receiver district shall:

1. Register as a receiver district with TXVSN central operations;
2. Assign a qualified staff member to serve as the TXVSN coordinator;
3. Enroll a student who resides in Texas and who is enrolled in a school other than a public school district or charter school upon request by the student and/or parent or guardian; and
4. In accordance with 19 Administrative Code 74.26 (relating to Award of Credit), award credit to a student enrolled in the district who has successfully completed all state and local requirements and received a grade that is the equivalent of 70 on a scale of 100, based upon the essential knowledge and skills for a course offered through the TXVSN statewide course catalog.

*19 TAC 70.1008*

Courses

All electronic courses to be made available through the TXVSN shall be reviewed and approved prior to being offered in accordance with the course requirements at 19 Administrative Code 70.1005. *19 TAC 70.1005(a)*

An electronic course or program that was offered or could have been offered during the 2008–09 school year under former Education Code 29.909, as that section existed on January 1, 2009, may be offered during a subsequent school year through the TXVSN. *Education Code 30A.006*

<p>Student Eligibility</p> <p style="padding-left: 20px;"><i>Generally</i></p>	<p>A student is eligible to enroll in a TXVSN course only if the student:</p> <ol style="list-style-type: none"> <li>1. On September 1 of the school year is younger than 21 years of age or is younger than 26 years of age and entitled to the benefits of the Foundation School Program under Education Code <del>428</del>.003;</li> </ol> <div style="background-color: yellow; padding: 2px; margin: 5px 0;"> <p><del>4.</del> JW 6/26/19: HB 3 conforming amendments, effective September 1, 2019. Section 3.038.</p> </div> <ol style="list-style-type: none"> <li>2. Has not graduated from high school; and</li> <li>3. Is otherwise eligible to enroll in a public school in this state.</li> </ol> <p>A student is eligible to enroll full-time in courses provided through the TXVSN only if:</p> <ol style="list-style-type: none"> <li>1. The student was enrolled in a public school in this state in the preceding school year;</li> <li>2. The student is a dependent of a member of the United States military who has been deployed or transferred to this state and was enrolled in a publicly funded school outside of this state in the preceding school year; or</li> <li>3. The student has been placed in substitute care in this state, regardless of whether the student was enrolled in a public school in this state in the preceding school year.</li> </ol>
<p>Exception for Military Dependents</p>	<p>A student is eligible to enroll in one or more TXVSN courses or enroll full-time in courses provided through the network if the student:</p> <ol style="list-style-type: none"> <li>1. Is a dependent of a member of the United States military;</li> <li>2. Was previously enrolled in high school in this state; and</li> <li>3. No longer resides in this state as a result of a military deployment or transfer.</li> </ol>
<p>Provisional Enrollment</p>	<p>If a student has not provided required evidence of eligibility to enroll, a TXVSN OLS may enroll a student provisionally for ten school days and withdraw the student from the OLS if the student does not provide the required evidence of eligibility within ten school days of the provisional enrollment.</p> <p>Upon enrolling a student provisionally, the TXVSN OLS shall notify the student and the student's parents or guardians that the student will be withdrawn if documentation is not provided within the required timeframe.</p> <p style="text-align: right;"><i>Education Code 30A.002; 19 TAC 70.1013</i></p>

*Enrolled Students* A student who is enrolled in the district as a full-time student may take one or more electronic courses through the TXVSN. *Education Code 30A.107(b)*

*Unenrolled Students* A student who resides in this state but who is not enrolled in a school district or open-enrollment charter school in this state as a full-time student may, subject to Education Code 30A.155, enroll in electronic courses through the TXVSN. The student:

1. May not in any semester enroll in more than two electronic courses offered through the TXVSN;
2. Is not considered to be a public school student;
3. Must obtain access to a course provided through the network through the school district or open-enrollment charter school attendance zone in which the student resides;
4. Is not entitled to enroll in a course offered by a school district or open-enrollment charter school other than an electronic course provided through the network; and
5. Is not entitled to any right, privilege, activities, or services available to a student enrolled in a public school, other than the right to receive the appropriate unit of credit for completing an electronic course.

*Education Code 30A.107(c)*

*Enrollment, Advancement, and Withdrawal* A student taking a course through the TXVSN statewide course catalog or a TXVSN OLS program is considered to:

1. Be enrolled in a TXVSN course when he or she begins receiving instruction and actively engages in instructional activities in a TXVSN subject area or course;
2. Have successfully completed a course if the student demonstrates academic proficiency and earns credit for the course, as determined by the TXVSN teacher; and
3. Be, and must be reported as, withdrawn from the TXVSN when the student is no longer actively participating in the TXVSN course or program.

A student taking a course through the TXVSN statewide course catalog:

1. Shall enroll in each TXVSN course through the TXVSN online registration system;
2. Shall be assigned a grade by the TXVSN teacher after the drop period established by TXVSN central operations;



- 3. May withdraw from a course taken through the TXVSN after the instructional start date without academic or financial penalty within the drop period established by TXVSN central operations; and
- 4. Shall have the grade assigned by the TXVSN teacher added to the student’s transcript by the student’s home district.

A student enrolled full time in grades 3–8 must demonstrate academic proficiency sufficient to earn promotion to the next grade, as determined by the TXVSN teacher for the educational program.

*19 TAC 70.1015*

*Compulsory  
Attendance*

Texas public school students are not required to be in physical attendance while participating in courses through a TXVSN OLS or the TXVSN course catalog.

Based upon successful completion of a TXVSN course for students in grades 9–12 or a TXVSN OLS instructional program for students in grades 3–8, students are considered to have met attendance requirements for that course or program. A student who has successfully completed the grade level or course is eligible to receive any weighted funding for which the student is eligible.

For audit purposes, TXVSN course providers and TXVSN receiver districts shall maintain documentation to support the students’ successful completion and to support verification of compulsory attendance.

“TXVSN receiver district” means a Texas public school district that has students enrolled in the school district who take one or more online courses through the TXVSN statewide course catalog.

*19 TAC 70.1001(9), .1017*

Local Policy

A district shall adopt a written policy that provides students enrolled in the district with the opportunity to enroll in electronic courses provided through the TXVSN statewide course catalog. The policy must be consistent with the requirements regarding notice, enrollment requests, and students with disabilities as described below.

A district shall, at least once per school year, send to a parent of each district student enrolled at the middle or high school level a copy of the policy. A district may send the policy with any other information that the district sends to a parent.

*Education Code 30A.007; 19 TAC 70.1033*

*Notice*

At the time and in the manner that a district informs students and parents about courses that are offered in the district’s traditional

	<p>classroom setting, the district shall notify parents and students of the option to enroll in an electronic course offered through the TXVSN.</p>
<i>Requests to Enroll</i>	<p>Except as provided below, a district may not deny the request of a parent of a full-time student to enroll the student in an electronic course offered through the TXVSN.</p> <p>A district may deny a request to enroll a student in an electronic course if:</p> <ol style="list-style-type: none"> <li>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;</li> <li>2. The student requests permission to enroll in an electronic course at a time that is not consistent with the enrollment period established by the district providing the course; or</li> <li>3. The district offers a substantially similar course.</li> </ol>
	<p>The course provider shall make all reasonable efforts to accommodate the enrollment of a student in the course under special circumstances.</p> <p>If a parent of a student requests permission to enroll the student in a TXVSN course, a district has discretion to select a course provider approved by TEA for the course in which the student will enroll based on factors including the informed choice report required by Education Code 30A.108(b).</p>
Appeals	<p>A parent may appeal to the commissioner a district’s decision to deny a request to enroll a student in an electronic course offered through the TXVSN. The commissioner’s decision under this subsection is final and may not be appealed.</p> <p><i>Education Code 26.0031; 19 TAC 70.1008, .1035</i></p>
<i>Students with Disabilities</i>	<p>For purposes of the policy, the determination of whether or not an electronic course will meet the needs of a student with a disability shall be made by the student’s admission, review, and dismissal (ARD) committee in a manner consistent with state and federal law, including the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794. <i>Education Code 30A.007(b)</i></p>
Required Enrollment Prohibited	<p>A school district or open-enrollment charter school may not require a student to enroll in an electronic course. <i>Education Code 30A.107(d)</i></p>

Inducements for Enrollment Prohibited	<p>A course provider may not promise or provide equipment or any other thing of value to a student or a student's parent as an inducement for the student to enroll in an electronic course offered through the TXVSN. The commissioner shall revoke approval of electronic courses offered by a course provider that violates this prohibition. The commissioner's action under this section is final and may not be appealed. <i>Education Code 30A.1052</i></p>
Course Portability	<p>A student who transfers from one educational setting to another after beginning enrollment in an electronic course is entitled to continue enrollment in the course. <i>Education Code 30A.1051; 19 TAC 70.1015(d)</i></p>
Student Assessment	<p>All Texas public school students enrolled in the TXVSN are required to take the statewide assessments as required in Education Code 39.023 [see EKB]. The administration of the assessment instrument to the student enrolled in the electronic course must be supervised by a proctor.</p> <p>A district shall report to the commissioner through the Public Education Information Management System (PEIMS) the results of assessment instruments administered to students enrolled in an electronic course offered through the TXVSN separately from the results of assessment instruments administered to other students.</p> <p>All districts participating in the TXVSN OLS program are included in the state's academic accountability system.</p> <p><i>Education Code 30A.110; 19 TAC 70.1023</i></p>
Funding	<p>A district in which a student is enrolled is entitled to funding under Education Code Chapter <del>482</del> for the student's enrollment in a TXVSN course in the same manner that the district is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course.</p> <p>Funding is limited to a student's enrollment in not more than three electronic courses during any school year, unless the student is enrolled in a full-time online program that was operating on January 1, 2013.</p> <p><i>Education Code 30A.153</i></p> <p><b><u>JW 6/26/19: HB 3, conforming amendments, September 1, 2019. Section 3.039.</u></b></p> <p>A district may decline to pay the cost for a student of more than three yearlong electronic courses, or the equivalent, during any</p>

school year unless the student is enrolled in a full-time online program that was operating on January 1, 2013. If the district declines to pay the cost, a student is able to enroll in additional electronic courses at the student's cost. *Education Code 26.0031(c-1)*

## Course Cost

A district may charge the course cost for enrollment in a TXVSN course to a student who resides in this state and:

1. Is enrolled in the district as a full-time student with a course load greater than that normally taken by students in the equivalent grade level in other school districts; or
2. Elects to enroll in a TXVSN course for which the district in which the student is enrolled as a full-time student declines to pay the cost as authorized by Education Code 26.0031(c-1).

A district may charge the course cost for enrollment in a TXVSN course during the summer.

A district shall charge the course cost for enrollment in a TXVSN course to a student who resides in this state and is not enrolled in a school district or open-enrollment charter school as a full-time student.

A TXVSN course cost may not exceed the lesser of the cost of providing the course or \$400.

A district may decline to pay the course costs for a student who chooses to enroll in more than three year-long electronic courses, or the equivalent, during any school year. This does not limit the ability of the student to enroll in additional electronic courses offered through the TXVSN at the student's expense.

A district that is not the course provider may charge a student enrolled in the district a nominal fee, not to exceed \$50, if the student enrolls in a TXVSN course that exceeds the course load normally taken by students in the equivalent grade level.

A course provider in the TXVSN statewide course catalog shall receive:

1. No more than 70 percent of the catalog course cost prior to a student successfully completing the course; and
2. The remaining 30 percent of the catalog course cost when the student successfully completes the course.

*Education Code 30A.155(a)–(c-1); 19 TAC 70.1025*

Educators of  
Electronic Courses

Each instructor of an electronic course, including a dual credit course, offered through the TXVSN by a course provider must be certified under Education Code Chapter 21, Subchapter B, to teach

that course and grade level or meet the credentialing requirements of the institution of higher education with which they are affiliated and that is serving as a course provider.

In addition, each instructor must successfully complete one continuing professional development course specific to online learning every three years, and:

1. Successfully complete a professional development course or program approved by TXVSN central operations before teaching an electronic course offered through the TXVSN; or
2. Have a graduate degree in online or distance learning and have demonstrated mastery of the International Association for K–12 Learning (iNACOL) National Standards for Quality Online Teaching; or
3. Have two or more years of documented experience teaching online courses for students in grades 3–12 and have demonstrated mastery of the iNACOL National Standards for Quality Online Teaching.

Each instructor of an electronic course, including a dual credit course, offered through the TXVSN by a course provider must meet highly qualified teacher requirements under the Elementary and Secondary Education Act, as applicable.

TXVSN course providers shall affirm the preparedness of teachers of TXVSN electronic courses to teach public school-age students in a highly interactive online classroom and shall:

1. Maintain records documenting:
  - a. Valid Texas educator certification credentials appropriate for the instructor's TXVSN assignment;
  - b. Successful initial completion of TXVSN-approved professional development, evidence of prior online teaching, or a graduate degree in online or distance learning; and
  - c. Instructors' demonstrated mastery of the iNACOL National Standards for Quality Online Teaching prior to teaching through the TXVSN;
2. Conduct and maintain records for background checks;
3. Maintain records of successful completion of continuing professional development;
4. Maintain records documenting successful completion of TXVSN-approved professional development before the end of

the school year for any instructor who is hired after the school year has begun; and

5. Make the records specified in this subsection available to TEA and TXVSN central operations upon request.

*19 TAC 70.1027*

Revocation

The commissioner may revoke the right to participation in the TXVSN based on any of the following factors:

1. Noncompliance with relevant state or federal laws;
2. Noncompliance with requirements and assurances outlined in the contractual agreements with TXVSN central operations and/or these provisions and Education Code Chapter 30A; or
3. Consistently poor student performance rates as evidenced by results on statewide student assessments, student withdrawal rates, student completion rates, successful completion rates, or campus accountability ratings.

*19 TAC 70.1029*

Applicability

Unless a district chooses to participate in providing an electronic course or an electronic diagnostic assessment under Education Code Chapter 30A to a student who is located on the physical premises of a school district or open-enrollment charter school, Chapter 30A does not affect the provision of a course to such a student.

Requirements imposed by or under Education Code Chapter 30A do not apply to a virtual course provided by a district only to district students if the course is not provided as part of the TXVSN.

*Education Code 30A.004*

**Automatic Admission to Institution of Higher Education**

All applicants from Texas schools accredited by a generally recognized accrediting agency and who graduate in the top ten percent of their high school class or who graduate in the top 25 percent of their high school class, to the extent the governing board of a general academic teaching institution has adopted such an admission policy, shall be admitted to a general academic teaching institution [see Education Code 61.003(3)] if the student meets the following conditions:

1. The student has met one of the following:
  - a. Successfully completed the distinguished level of achievement under the Foundation, Recommended, or Advanced High School Program from a Texas public high school as outlined under Education Code 28.025 [see EIF];
  - b. Satisfied ACT's College Readiness Benchmarks on the ACT assessment; or
  - c. Earned a score on the SAT that meets the minimum requirements described by 19 Administrative Code 5.5(b)(1)(D).
2. The student submitted an official high school transcript or diploma that must, not later than the end of the student's junior year, indicate whether the student has satisfied the above requirements.

*19 TAC 5.5(b); Education Code 51.803(a)*

Valedictorian Eligibility

In addition to admissions under the top ten percent rule, each general academic teaching institution shall admit an applicant for admission to the institution as an undergraduate student if the applicant graduated as the valedictorian of the student's high school graduating class in one of the two school years preceding the academic year for which the student is applying for admission and satisfies the requirements listed in Education Code 51.803.

*Education Code 51.803(d-1)*

**JW 6/13/19: HB 539, effective 6/10/19. I may need to reword this. I did not include scholarship information or other details. Should I include more here?**

Exception

Beginning with admissions for the 2011–12 academic year, the University of Texas at Austin (UT) is not required to offer admission to applicants who qualify for automatic admission in excess of the

number required to fill 75 percent of the university's enrollment capacity designated for first-time resident undergraduate students in an academic year.

If the number of applicants who apply to UT for admission in the next academic year and who qualify for automatic admission exceeds 75 percent of UT's enrollment capacity, UT shall, not later than September 15, provide to each district, for dissemination to high school juniors and their parents, notice of which percentile ranks of high school seniors who qualify for automatic admission are anticipated to be offered admission during the next school year.

*Education Code 51.803(a-1)–(a-2)*

Curriculum  
Requirements

An applicant who does not satisfy the curriculum requirements for the distinguished level of achievement under the foundation program, the Recommended High School Program, or the Advanced/Distinguished Achievement High School Program is considered to have satisfied those requirements if the student completed the portion of the applicable curriculum that was available to the student but was unable to complete the remainder solely because the necessary courses were unavailable to the student at the appropriate times in the student's high school career as a result of course scheduling, lack of enrollment capacity, or another cause not within the student's control. *Education Code 51.803(b)*

To qualify for admission under this section, an applicant must submit an application before the expiration of any application filing deadlines and provide a transcript that satisfies the requirements listed in Education Code 51.803(d). A student's transcript or diploma must, not later than the student's junior year, indicate the student's progress toward satisfying the curriculum requirements [see EI]. *Education Code 51.803(c)-(d)*

Signs to Be Posted

A board shall require each high school in the district to post appropriate signs in each school counselor's office, in each principal's office, and in each administrative building indicating the substance of the automatic admission provisions above. *Education Code 28.026*

Dissemination

A district shall provide each student, at the time the student first registers for one or more classes required for high school graduation, with a written notification concerning automatic college admission, the curriculum requirements for financial aid under Education Code, Title 3, and the benefits of completing the requirements for automatic admission and financial aid. A school district shall obtain written acknowledgement of receipt of the notification from each eligible student and student's parent or guardian. The notification



must be signed by the student's school counselor in addition to being signed by the student and the student's parent or guardian. 19 TAC 61.1201

To assist in dissemination of information regarding the automatic admissions program, a district shall:

1. Require that each school counselor and class advisor at a high school be provided a detailed explanation of the substance of the program;
2. Provide each student, at the time the student first registers for one or more classes required for high school graduation, with a written notification, using the appropriate form adopted by the Commissioner, of the substance of the program;
3. Require that each school counselor and senior class advisor at a high school explain to eligible students the substance of the program;
4. Require that, at the beginning of grades 10 and 11, a certified counselor 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 FFEA]; and
5. Not later than the 14th day after the last day of classes for the fall semester or an equivalent date in the case of a school operated on a year-round system, provide each eligible senior student and each junior student who has a grade point average in the top ten percent of the student's high school class, and the student's parent or guardian, with a written notification, using the appropriate form adopted by the Commissioner, of the student's eligibility with a detailed explanation in plain language of the substance of the program. The district shall obtain written acknowledgment of receipt of the notification from each eligible student and the student's parent or guardian.

*Education Code 28.026, 33.007(c)*

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**Note:** The [Notification of Eligibility for Automatic College Admission](#),<sup>1</sup> intended to satisfy the requirement at item 5 above, is available on the TEA website.

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Class Rank

High school rank for students seeking automatic admission to a general teaching institution on the basis of their class rank is determined and reported as follows:

1. Most recent available class rank, based on a point in time no earlier than the end of the 11th grade, shall be used for admission decision-making.
2. The top ten percent and top 25 percent of a high school class shall not contain more than ten percent and top 25 percent, respectively, of the total class size.
3. The student's rank shall be reported by the applicant's high school or school district as a specific number out of a specific number total class size.
4. Class rank shall be determined by the Texas school or district from which the student graduated or is expected to graduate.

*19 TAC 5.5(f)*

*Certain Programs*

If the program meets the requirements of Education Code 51.8045, a board may treat a high school magnet program, academy, or other special program conducted by the district at a high school attended by high school students who are not in the special program as an independent high school with its own graduating class for purposes of Education Code 51.803 and 51.804 only (top ten and top 25 percent rule). *Education Code 51.8045*

**End-of-Course  
Assessments**

A student's performance on an end-of-course assessment instrument may not be used in determining the student's class ranking for any purpose, including entitlement to automatic college admission. *Education Code 39.0232(b)(1)*

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<sup>1</sup> Notification of Eligibility for Automatic College Admission:  
<http://tea.texas.gov/index2.aspx?id=2147485632>

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**High School Diploma** A student may graduate and receive a diploma only if the student successfully completes:

1. The curriculum requirements identified by the State Board of Education (SBOE) [see State Graduation Requirements, below] and has performed satisfactorily on applicable state assessments [see EKB]; or
2. An individualized education program (IEP) developed under Education Code 29.005. [See EHBAB]

*Education Code 28.025(c)*

**JW 7/6/19: FAFSA requirement will go here in UI15.**

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**Note:** Education Code 28.0258 and 19 Administrative Code 74.1025 related to individual graduation committees expire September 1, 2023~~19~~.

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Individual  
Graduation  
Committee

**JW 5/10/19: SB 213, effective 5.7.19, extended the sunset date from 2019 to 2023. Note that the same bill extended the sunset date on a few other provisions of this policy related to IGCs and to students who entered G9 in 2011-12**

Without complying with the requirements above, 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)*

For each 11th or 12th grade student who has failed to comply with the end-of-course (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 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*

*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)*

*English  
Language  
Learners*

For provisions related to an IGC and English language learners (ELL), see EKB(LEGAL).

Students Who  
Entered Grade 9  
Before the 2011–12  
School Year

In accordance with Education Code 28.02541, a school district may award a high school diploma to an individual who:

1. Entered grade 9 before the 2011–12 school year;
2. Successfully completed the curriculum requirements for high school graduation applicable when the individual entered grade 9;
3. Has not performed satisfactorily on the exit-level assessment instrument or part of an assessment instrument required for high school graduation, including an alternative assessment instrument offered under Education Code 39.025(c-24);
4. Has been administered at least three times the required subject-area test(s) for which the individual has not performed satisfactorily on the exit-level assessment instrument applicable to the individual when the individual entered grade 9; and
5. Meets the alternative requirements for graduation in accordance with 19 Administrative Code 74.1027(c) or the local alternative requirements approved by the board in accordance with 19 Administrative Code 74.1027(d).

*19 TAC 74.1027(a); Education Code 28.02541*

**JW 7/6/19: SB 213, effective 9/1/2019 (specific to Section 3).**

*District  
Determination*

The school district in which the individual is enrolled or was last enrolled shall determine whether the individual may qualify to graduate and receive a high school diploma on the basis of the alternative requirements for graduation. *19 TAC 74.1027(b)*

*Alternative  
Requirements*

The alternative requirements for graduation are listed at 19 Administrative Code 74.1027(c).

*Local Alternative  
Requirements*

With approval by the board, a district may develop recommendations for local alternative requirements if the requirements would allow an individual to demonstrate proficiency in the content related

to an examination for which the individual has not performed satisfactorily. *19 TAC 74.1027(d)*

*Appeals*

A decision regarding whether the individual qualifies to graduate and receive a high school diploma is final and may not be appealed. *19 TAC 74.1027(e); Education Code 28.02541*

*Documentation*

The district shall maintain documentation to support the decision to award or not award an individual a high school diploma. *19 TAC 74.1027(f)*

[JW 5/10/19: The previous updater did not add TEC 28.0259, the requirement to report IGC data to TEA through PEIMs. Do we want to add this?](#)

[JW 6/14/19: HB 3- FAFSA/TAESA not effective until 2020-21 school year.](#)

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 admission, review, and dismissal (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 enrolled in grade 12 during the ~~2005–06~~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 grade level 12, provided that the student was academically on track at the time of death to receive a diploma~~ at the end of the school year in which the student was expected to graduate under the regular schedule of school attendance ~~in which the student died. 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. "School year" includes any summer session following the spring semester.~~

*Exception*

A district is not required to issue a posthumous diploma if the student was convicted of a felony offense under Title 5 or 6, Penal Code, or adjudicated as having engaged in conduct constituting a felony offense under Title 5 or 6, Penal Code.

*Education Code 28.0254*

[JW 5/27/19: HB 638, effective 5.23.2019, applies beginning with students who would have graduated at the end of the 2019-2020 school year.](#)

**Question: What happens to the students before the 19-20 school year since the law has been changed? Can they look to the old law or is it no longer valid since it's been appealed?**

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*

**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

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**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.

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Students Entering  
Grade 9 ~~in~~-after the  
2014–15 School  
Year

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, 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), (c)*

*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*

*Endorsements*

A student shall specify in writing an endorsement the student intends to earn upon entering grade 9. 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 110–118, 126, 127, and 130 are followed.

*Education Code 28.025; 19 TAC 74.13*

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(d)*

*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(e)*

*Algebra II  
Notification*

Not later than September 1 of each school year, a district shall notify by regular mail or e-mail the parent of or other person standing in parental relation to each student enrolled in grade nine<sup>9</sup> 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](#)

[JW 6/13/19: SB 232, effective 6/14/19. Applies beginning with the 2019-20 school year. I'm not sure if this is the right place to put this.](#)

*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(i)–(j)*

*College Courses*

Courses offered for dual credit at or in conjunction with an institution of higher education 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(h)*

*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)*

[The State Board of Education SBOE shall adopt criteria to allow a student to comply with the curriculum requirement for one credit for](#)

[a language other than English by successfully completing at an elementary school a course in American Sign Language. Education Code 28.025\(b-21\)](#)

**JW 6/13/19: HB 678, effective 6-10-2019. This will probably be replaced by the rule eventually since right now it reads like an SBOE requirement. Should we wait to include it?**

*Physical  
Education  
Substitutions*

Other Physical  
Activity

In accordance with local district policy, the required physical education credit may be earned through completion of any TEKS-based course 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. JROTC; and
3. Appropriate private or commercially sponsored physical activity programs conducted on or off campus. A district must apply to the commissioner of education 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 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.

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 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.

*Education Code 28.025(b-10)–(b-11); 19 TAC 74.12(b)(6)*

*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;
  - 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*

Transition to  
Foundation High  
School Program

A district shall allow a student who entered grade 9 prior to the 2014–15 school year to complete the curriculum requirements for high school graduation:

1. By satisfying the requirements in place when the student entered grade 9 for the Minimum, Recommended, or Advanced/Distinguished Achievement High School Program [see 19 Administrative Code Chapter 74] if the student was participating in the program before the 2014–15 school year; or
2. Under the foundation high school program by satisfying the requirements adopted by the SBOE, if the student chooses during the 2014–15 school year to take courses under the program.

A student who entered grade 9 prior to the 2014–15 school year may, at any time prior to graduation and upon request, choose to complete the curriculum requirements required for high school graduation under a different program than that selected by the student during the 2014–15 school year.

*19 TAC 74.1021*

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 tenth 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.  <i>19 TAC 74.61(c), (d), .71(c), (d)</i>
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.  <i>Education Code 28.025; 19 TAC 74.62, .72</i>
<i>Recommended High School Program</i>	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. <i>Education Code 28.025; 19 TAC 74.63, .73</i>
<i>Advanced / Distinguished Achievement High School Program</i>	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. <i>Education Code 28.025; 19 TAC 74.64, .74</i>
<i>Substitutions</i>	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. <i>19 TAC 74.63(d), .64(e), .73(d), .74(e)</i>
<i>AP or IB Courses</i>	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. <i>19 TAC 74.61(k), .71(i)</i>
<i>Reading</i>	A district may offer a maximum of 3 credits of reading for state graduation elective credit for identified students if the district: <ol style="list-style-type: none"> <li>1. Adopts policies to identify students in need of additional reading instruction;</li> </ol>

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 institution of higher education. *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(f) [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 110–118, 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(l)

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(j)

Summary of Academic Achievement and Evaluation

All students graduating must be provided with a summary of academic achievement and functional performance as described in 34 C.F.R. 300.305(e)(3). This summary must 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. An evaluation as required by 34 C.F.R. 300.305(e)(1) (evaluation to determine that the child is no longer a child with a disability), must be included as part of the summary for a student graduating under 19 Administrative Code 89.1070 (b)(2)(A), (B), or (C) or (g)(4)(A), (B), or (C). Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2)(A), (B), or (C) or (g)(4)(A), (B), or (C) and who will remain in school to complete their education do not have to be evaluated. 19 TAC 89.1070(h)–(i)

*Students Entering Grade 9 in or After the 2014–15 School Year*

A student entering grade 9 in the 2014–15 school year and thereafter who receives special education services may graduate and be awarded a regular high school 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 110-118, 126-128, and 130 and satisfactorily completed credit requirements for graduation under the foundation high school program applicable to students in general education as well as satisfactory performance on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.

2. The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–118, 126–128, and 130 and satisfactorily completed credit requirements for graduation under the foundation high school program through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary 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.
  - c. The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.
  - d. The student no longer meets age eligibility requirements.

When a student receives a diploma under item 2(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), (k)*

*Endorsements*

A student who is enrolled in a special education program may earn an endorsement on the student's transcript by:

1. Successfully completing, with or without modification of the curriculum:
  - a. The curriculum requirements identified by the ~~State Board of Education~~SBOE for the foundation high school program; and
  - b. The additional endorsement curriculum requirements prescribed by the ~~State Board of Education~~SBOE; and
2. Successfully completing all curriculum requirements for that endorsement adopted by the ~~State Board of Education~~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 ~~admission, review, and dismissal~~ARD committee.

The ~~admission, review, and dismissal~~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 an endorsement on the student's transcript.~~receiving special education services may earn an endorsement if the student:~~

- ~~1.——Education Code 28.025(c-7)—(c-8)Satisfactorily completes the requirements for graduation under the foundation high school program as well as the additional credit requirements in mathematics, science, and elective courses with or without modified curriculum;~~
- ~~2.——Satisfactorily completes the courses required for the endorsement without any modified curriculum; and~~
- ~~3.——Performs satisfactorily on the required state assessments.~~  
~~19-TAC 89.1070(e)~~

~~A student in grade 11 or 12 receiving special education services who has taken each of the state assessments required by 19-Administrative Code Chapter 101, Subchapter CC (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no~~

~~more than two of the assessments is eligible to receive an endorsement if the student has met the requirements of items 1 and 2 above. 19 TAC 89.1070(d)~~

~~In order for a student receiving special education services to use a course to satisfy both a requirement under the foundation high school program and a requirement for an endorsement, the student must satisfactorily complete the course without any modified curriculum. 19 TAC 89.1070(e)~~

**JW 7/2/19: HB 165, effective 6/10/2019. I deleted all the TAC provisions here because they conflict with the new law and will have to be amended.**

*Students  
Entering Grade 9  
Before the 2014–  
15 School Year*

A student receiving special education services who entered grade 9 before the 2014–15 school year may graduate and be awarded a high school diploma under the foundation high school program if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. A student transitioning to the Foundation High School Program may earn an endorsement as set out above [see Endorsements, above].

A student receiving special education services in 11th or 12th grade who has taken each of the required state assessments but failed to achieve satisfactory performance on no more than two of the assessments may graduate if the student has satisfied all other applicable graduation requirements. [See Special Education, above, and EKB]

*19 TAC 89.1070(f)*

A student receiving special education services who entered grade 9 before the 2014–15 school year may graduate and be awarded a regular high school 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 110–118, 126–128, and 130 and satisfactorily completed credit requirements for graduation under the Recommended or Advanced/Distinguished Achievement Programs, including satisfactory performance on the required state assessments.
2. The student is in grade 11 or 12 and has taken each of the state assessments required by 19 Administrative Code Chapter 101, Subchapter CC (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas



Testing Program) or Subchapter DD (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments and has met all other applicable graduation requirements in item 1 above.

3. The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–118, 126–128, and 130 and satisfactorily completed credit requirements under the Minimum High School Program, including participation in state assessments. The student's ARD committee shall determine whether satisfactory performance on the required state assessments is necessary for graduation.
4. The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–118, 126–128, and 130 through courses, one or more of which contain modified content that is aligned to the standards required under the Minimum High School Program as well as the satisfactorily completed credit requirements under the Minimum High School Program, including participation in required state assessments. The student's ARD committee shall determine whether satisfactory performance on the required state assessments is necessary 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;
  - c. The student has access to services that are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program; or
  - d. The student no longer meets age eligibility requirements.

When a student receives a diploma under item 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(g), (k)*

**Graduation of  
Military Dependents**

Course Waiver

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.

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 tenth 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. ~~“Student who is homeless” has the meaning assigned to the term “homeless children and youths” under 42 U.S.C. Section 11434a.~~ *Education Code 28.025(i)*

[JW 6/14/19: SB 668, effective June 10, 2019.](#)

**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, ~~39.032~~; 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 ACT-Plan, 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 [E\\_c](#)ommissioner [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

JW 7/22/19: New 19 TAC 101.6003, adopted to be effective July 22, 2019, 44 Tex. Reg 3631.

I changed the margins to combine this information in one section instead of splitting up the benchmark and the local assessment limitations.

**College Preparation Assessments**

~~The following provisions apply only if the legislature appropriates funds for these purposes.~~

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)

~~2. —~~

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; ~~or~~
2. The assessment instrument designated by the Texas Higher Education Coordinating Board under Education Code 51.334.

A high school student is not prohibited from taking ~~the~~a 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

**JW 7/2/19: HB 3, effective 9-1-2019. Sections 1.035 and 2.034, effective 9/1/2019 and 6/12/2019.**

The Texas Education Agency (TEA) shall:

1. Select and approve vendors of the specific assessment instruments administered under this section; and
2. Provide reimbursement to a district for all fees associated with the administration of the assessment instrument, from funds appropriated for that purpose.

TEA shall ensure that a school district is not reimbursed for the administration of an assessment instrument to a student to whom the assessment instrument is not actually administered.

Education Code 39.0261(b)-(c)

### 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*



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**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*

Limited English Proficient Students

In grades 3–12, a limited English proficient (LEP) 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 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 a commissioner's substitute passing standard shall apply.

*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 achieving a score on an assessment instrument 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 grade 10 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, §§ B–C [See FDD]*

**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)~~(1) and (2)~~, 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*

**JW 7/2/19: HB 3906, effective 6/14/2019, amended TEC 39.023(c-3), but the TAC rule is still accurate with the exception of the deleted material.**

*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*

**Notice to Parents  
and Students**

A superintendent shall be responsible for providing written notice to each student and the student's parent or guardian of:

1. The testing requirements for grade advancement [see EIE] and the dates, times, and locations of testing. Notice of testing requirements shall be provided no later than the beginning of the student's kindergarten year, for students attending kindergarten in the district, and no later than the beginning of the student's first-grade year for all other students. The superintendent shall also provide such notice for students in grades 1–8 who are new to the district.
2. The testing requirements for graduation and the dates, times, and locations of testing. Notice of testing requirements shall be provided no later than the beginning of the student's seventh-grade year. The superintendent shall also provide such notice for students in grades 7–12 who are new to the district.

Notice of the dates, times, and locations of testing shall be provided to each student who will take the tests and to out-of-school individuals.

*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) (LEP students) or exempted under Education Code 39.027, shall be assessed in:

1. Mathematics, annually in grades 3–~~7 without the aid of technology and in grade 8 with the aid of technology on any assessment instrument that includes algebra~~;
2. Reading, annually in grades 3–8;
3. Writing, including spelling and grammar, in grades 4 and 7;
4. Social studies in grade 8;
5. Science in grades 5 and 8; and
6. Any other subject and grade required by federal law.

*Education Code 39.023(a)*

JW 7/2/19: HB 3906, effective 6/14/2019. Should I also note (a-4) or should we wait until we have a SBOE rule?

(a-4) For purposes of Subsection (a)(1), the State Board of Education by rule may designate sections of a mathematics assessment instrument for a grade level that:

(1) may be completed with the aid of technology; and

(2) must be completed without the aid of technology

Exception

Except as required 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.

A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is receiving instruction in the entire curriculum for that subject.

A student in grade 5 or 8 described above may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument above the student's grade level.

*Education Code 28.0211(p), 39.023(a-2); 19 TAC 101.3011*

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)

Prekindergarten  
Assessment

Performance on an assessment instrument administered to students in prekindergarten may not be considered for any purpose related to Education Code Chapters 39 and 39A. Education Code 39.027

JW 7/2/19: All changes are from HB 3906, effective 6/14/2019. HB 3906 made other changes, but I think most of them effect TEA's assessment development.

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)*

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) only for a course in which the student is enrolled and for which an EOC assessment instrument is administered in order to be eligible to receive a Texas diploma.

**JW 7/6/19: I did not add HB 1244, the bill amending the history EOC to include citizenship questions. We don’t get to that level of detail and the obligation is on the agency.**

*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 English language learners who meet the criteria in 19 Administrative Code 101.1007. [See EKBA]

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), .3022*

Substitute  
Assessments

The commissioner adopts certain assessments as substitute assessments that a student may use in place of a corresponding EOC assessment to meet the student's assessment graduation requirements. A satisfactory score on an approved assessment may be used in place of only one specific EOC assessment, except as provided by 19 Administrative Code 101.4002(d)(1) (relating to a student who qualifies for use of the Texas Success Initiative [TSI] as a substitute assessment and is enrolled in certain college preparatory courses; see TSI Additional Criteria, below).

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 TSI assessment, also meets the additional criteria.

*TSI Additional  
Criteria*

A student must meet the criteria established below in order to qualify to use TSI as a substitute assessment.

1. A student must have been enrolled in a college preparatory course for English language arts or mathematics and, in accordance with Education Code 39.025(a-1), have been administered an appropriate TSI assessment at the end of that course.
  - a. A student under this provision who meets all three TSI English language arts score requirements provided in the chart at 19 Administrative Code 101.4002(b) satisfies both the English I and English II EOC assessment graduation requirements.
  - b. A student under this provision may satisfy an assessment graduation requirement in such a manner regardless of previous performance on an Algebra I, English I, or English II EOC assessment.
2. In accordance with Education Code 39.025(a-3), a student who has not been successful on the Algebra I or English II EOC assessment after retaking the assessment may use the corresponding TSI assessment in place of that EOC assessment.



For a student under this provision who took separate reading and writing assessments for the English II EOC assessment and who did not meet the English II assessment graduation requirement using those tests as specified in 19 Administrative Code 101.3022(b) (relating to Assessment Requirements for Graduation), the separate TSI reading or writing assessment may not be used to substitute for the corresponding English II reading or writing EOC assessment.

A student electing to substitute an assessment for graduation purposes must still take the required EOC assessment if the student does not meet the eligibility requirements above. If a student sits for an EOC assessment, a district may not mark the substitute assessment bubble for that administration.

A student who fails to perform satisfactorily on the PSAT-related assessment or the pre-ACT test (or any versions of these tests) as indicated in the chart at 19 Administrative Code 101.4002(b) must take the appropriate required EOC assessment. However, a student who does not receive a passing score on the EOC assessment and retakes the PSAT-related assessment or pre-ACT test (or any versions of these tests) is eligible to meet the requirements to use a substitute assessment.

*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*

Satisfactory  
Performance

A student is required to achieve a scale score that indicates satisfactory performance, as determined by the commissioner on each EOC assessment instrument administered to the student. *Education Code 39.025(a)*

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-25)*

JW 7/6/19: SB 213, section 8, effective 5/7/2019.

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 (relating to Graduation Requirements) and 19 Administrative Code 101.3023 (relating to 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.

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 re-take 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 remaining 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)*

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 Texas 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.

Beginning with the 2011–12 school year, all grades 9–12 students with significant cognitive disabilities who are assessed with an alternate assessment as specified in the student's IEP will be assessed using alternate versions of EOC assessments as listed in 19 Administrative Code 101.3011(b)(2).

A student who is receiving special education services and who is first enrolled in grade 9 or below in the 2011–12 school year shall be administered an EOC assessment instrument upon completion of the corresponding course as required by the student's IEP.

*19 TAC 101.3023*

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)*

Additional State Assessments TEA may adopt EOC assessment instruments for courses not listed in statute, as described above. A student's performance on these EOC assessment instruments is not subject to the performance requirements established for the statutory assessments. *Education Code 39.023(c-2)*

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)*

**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, below. All test results shall be included in each student's academic achievement record and shall be furnished for each student transferring to another district or school. 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*

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)*

**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*

**Accelerated Instruction**

Each time a student fails to perform satisfactorily on an assessment instrument administered under Education Code 39.023(a) in the third, fourth, fifth, sixth, seventh, or eighth grade, the school district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area. Accelerated instruction may require participation of the student before or after normal school hours and may include participation at times of

the year outside normal school operations. *Education Code 28.0211(a-1)*

A district shall provide each student who fails to perform satisfactorily on an EOC assessment instrument with accelerated instruction in the subject assessed by the assessment instrument. *Education Code 39.025(b-1)* [See EHBC]

College Readiness

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 grade 12 level whose performance on:
  - a. An EOC 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(a) 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 the 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.

*Instructional  
Materials*

Each district, in consultation with the 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*

**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 ~~the~~ 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 ~~40~~ten 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 school district employees who have:
  - a. Met the requirements to participate in the student assessment program;
  - b. Received annual 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 TAC Administrative Code 101.3031(a)(2)(E).

~~To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, districts must comply with all of the applicable requirements specified in the test administration materials, which include general testing program information, requirements for ensuring test security and confidentiality described in the annual Test Security Supplement, procedures for test administration, responsibilities of personnel involved in test administration, and procedures for materials control.~~

~~Test coordinators and administrators must receive all applicable training as required in the test administration materials and districts must maintain records related to the security of assessment instruments for a minimum of five years.~~

19 TAC 101.3031(a)(1)–(a)(2)

JW 7/8/19: TAC update deleted the test security supplement and completely rewrote 19 TAC 101.3031 of the TAC. Amended to be effective April 23, 2019, 44 TexReg 1985.

[https://texreg.sos.state.tx.us/public/regviewer\\$ext.RegPage?sl=R&app=8&p\\_dir=&p\\_rloc=361499&p\\_tloc=&p\\_ploc=&pg=1&p\\_reg=361499&ti=19&pt=2&ch=101&rl=3031&issue=02/15/2019](https://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=R&app=8&p_dir=&p_rloc=361499&p_tloc=&p_ploc=&pg=1&p_reg=361499&ti=19&pt=2&ch=101&rl=3031&issue=02/15/2019)

**Confidentiality**

~~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]~~

JW 7/10/19: Moved. See below.

**Penalties** 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 ~~the~~ 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 (~~relating to~~ Educators' Code of Ethics) and Chapter 249 (~~relating to~~ Disciplinary Proceedings, Sanctions, and Contested Cases); and
3. Lowering the school district's accreditation status or a school district's, or campus's accountability rating in accordance with



Education Code 39.057(d), or appointment of a monitor, conservator, or management team to the school district or charter school in accordance with ~~TEG~~, Education Code Chapter 39A.

Test Administration Procedures

Test administration procedures shall be delineated in the test administration materials provided to school districts annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials.

School districts and charter schools 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 school districts and charter schools to maintain records related to the security of assessment instruments for five years.

19 TAC 101.3031(a-3)-(d)

~~Violation of security or confidentiality of any test is prohibited. A person who engages in conduct prohibited by the Test Security Supplement may be subject to sanction of credentials.~~

~~Procedures for maintaining the security and confidentiality of state assessments are specified in the Test Security Supplement and in the appropriate test administration materials. Conduct that violates the security and confidentiality of a test is defined as any departure from the test administration procedures established in the Test Security Supplement and other test administration materials. Conduct of this nature may include the following acts and omissions:~~

- ~~1. Directly or indirectly assisting students with responses to test questions;~~
- ~~2. Tampering with student responses;~~
- ~~3. Falsifying TELPAS holistic ratings or STAAR Alternate 2 student responses;~~
- ~~4. Viewing a test before, during, or after an assessment unless specifically authorized to do so;~~
- ~~5. Discussing or disclosing the contents of any portion of a secure test;~~
- ~~6. Scoring student tests, either formally or informally;~~
- ~~7. Solving secure test questions;~~

- ~~8.— Duplicating, recording, or electronically capturing secure test content unless authorized to do so;~~
- ~~9.— Fraudulently exempting or preventing a student from participating in the administration of a required state assessment;~~
- ~~10.— Receiving or providing unallowable assistance during the TELPAS calibration activities;~~
- ~~11.— Encouraging or assisting an individual to engage in the conduct described in the items listed above or any other serious violation of security and confidentiality; or~~
- ~~12.— Failing to report to an appropriate authority that an individual has engaged in conduct outlined in the items listed above or any other serious violation of security and confidentiality.~~

Disciplinary Action  
and Penalties

~~The State Board for Educator Certification (SBEC) may take any of the disciplinary following actions against a person who has violated the security or integrity of any assessment required by the 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. any person who violates, assists in the violation of, or solicits another to violate or assist in the violation of test security or confidentiality, as well as any person who fails to report such a violation:~~

- ~~1.— Place restrictions on the issuance, renewal, or holding of a Texas teacher certificate, either indefinitely or for a set term;~~
- ~~2.— Issue an inscribed or non-inscribed reprimand;~~
- ~~3.— Suspend a Texas teacher certificate for a set term;~~
- ~~4.— Revoke or cancel a Texas teacher certificate without opportunity for reapplication either for a set term or permanently; or~~
- ~~5.— Impose any additional conditions or restrictions upon a certificate that SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials.~~

~~Release or disclosure of confidential test content could result in criminal prosecution under Education Code 39.0303, Government Code 552.352, and Penal Code 37.10. SBEC may take any of the above actions based on satisfactory evidence that an educator has failed to cooperate with TEA in an investigation.~~

~~Any irregularities in test security or confidentiality may also result in the invalidation of student results.~~

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 101.3031(b)(2)~~; [19 TAC 249.15\(a\)-\(b\),\(g\)](#)

### **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]

JW 7/10/19: I moved this here so that we weren't breaking up the TAC. I also clarified that this section refers to results by clarifying the margin.

<b>Definition</b>	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. <i>Education Code 12.051(1), .052(b), .053(b)</i>
<b>Policy</b>	<p>A district shall adopt a campus charter and program charter policy, which shall specify the:</p> <ol style="list-style-type: none"> <li>1. Process for approval of a campus charter or program charter;</li> <li>2. Statutory requirements with which a campus charter or program charter must comply; and</li> <li>3. Items that must be included in a charter application.</li> </ol> <p><i>Education Code 12.058</i></p>
<b>Campus or Program Charter</b>	<p>A board may grant a charter to parents and teachers for a campus or a program on a campus.</p> <p>A board shall grant or deny the charter, through a public vote, if the board is presented with a petition signed by:</p> <ol style="list-style-type: none"> <li>1. The parents of a majority of the students at that campus; and</li> <li>2. A majority of the classroom teachers at that campus.</li> </ol> <p>A board may not arbitrarily deny a charter.</p> <p><i>Education Code 12.052</i></p>
<b>New Campus or Contract Charter</b>	<p>A board may grant a charter for:</p> <ol style="list-style-type: none"> <li>1. A new district campus; or</li> <li>2. A program that is operated: <ol style="list-style-type: none"> <li>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</li> <li>b. At a facility located in the boundaries of the district.</li> </ol> </li> </ol>
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	<p>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.</p> <p><i>Education Code 12.0521</i></p>
<b>District Charter</b>	<p>A board may grant a district charter to a campus.</p>
Enrollment Limit	<p>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.</p>
<i>Exception</i>	<p>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.</p> <p>A district charter may be granted to any campus that has received the lowest performance rating under Subchapter C, Chapter 39, Education Code.</p>
Open-Enrollment Charter School	<p>Subchapter D, Chapter 39, Education Code (related to 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.</p> <p>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.</p> <p><i>Education Code 12.0522</i></p>
<b>Cooperative Campus Charter</b>	<p>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:</p> <ol style="list-style-type: none"> <li>1. The parents of a majority of the students at each school; and</li> <li>2. A majority of the classroom teachers at each school.</li> </ol> <p><i>Education Code 12.053</i></p>
<b>Performance Contract</b>	<p>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.</p>

**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 program 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, 22.085, or 22.092.  
*Education Code 12.0631*

**JW 7/2/19: HB 3, effective 9/1/2019, Section 2A.005. This section only applies to Subchapter C, campus or program charters.**

**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;
- 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); ~~and~~
- i. Public school accountability under Subchapter B, C, D, F, and J, Chapter 39, and Chapter 39A; ~~and~~
- ~~i.~~ [The duty to discharge or refuse to hire certain employees or applicants for employment under Education Code 12.1059.](#)

*Education Code 12.056*

**JW 7/7/19: HB 3, Section 2A.003, effective 9/1/2019.**

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](#);

**JW 7/2/19: HB 3, effective 9/1/2019, section 2A.004.**

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*

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**Note:** The following provisions address requirements for a charter partnership to receive the benefits of Education Code 11.174 and ~~42.2511~~48.252. For the general campus charter requirements applicable to partnership charters, see EL(LEGAL).

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JW 7/2/19: All changes to this policy are a result of HB 3 redesignations, effective 9/1/2019, section 1.040.

### Contract Regarding Operation of District Campus

The board may contract with a partner to operate a campus. The partner may be an open-enrollment charter school or, on approval by the commissioner of education, an entity granted a charter by the district under Chapter 12, Subchapter C that is eligible to be awarded a charter under Education Code 12.101(a). The campus must be granted a charter under Chapter 12, Subchapter C. *Education Code 11.174(a), (d)*

A campus operated under a contract qualifies for an exemption from intervention as provided below and qualifies for funding as provided by Education Code ~~428.252~~44 [see Funding for Certain Students, below].

The board may enter into a contract only if:

1. The charter of the open-enrollment charter school has not been previously revoked;
2. For the three school years preceding the school year of the proposed operation of the campus, the open-enrollment charter school has received:
  - a. An overall performance rating of acceptable or higher; and
  - b. A financial accountability rating indicating financial performance of satisfactory or higher; or
3. The entity considered for a district-authorized charter has not previously operated an open-enrollment charter school in which the charter expired or was revoked or surrendered.

*Education Code 11.174(a)–(b)*

### Intervention Pause

For a campus under a contract that received an overall performance rating of unacceptable under Education Code Chapter 39, Subchapter C for the school year before operation under the contract began, the commissioner may not impose a sanction or take action against the campus under Education Code 39A for failure to

satisfy academic performance standards during the first two school years of operation of a campus under the contract. [See AIA, AIC]

A campus is eligible for an exemption from applicable sanctions or actions if the campus and the partnership to operate the campus meet all applicable requirements and the campus was operated under the partnership from the first to the last day of the school year of the campus. A school year must include, at a minimum, all minutes of operation and instructional time conducted on the campus, and all the days for which the instructional workforce of the campus that provides education services for students are employed.

The overall performance rating received by the campus during those first two school years is not included in calculating consecutive school years and is not considered a break in consecutive school years.

*Education Code 11.174(f); 19 TAC 97.1077*

#### *Applicability*

A campus shall not qualify for an intervention pause unless during the school year prior to the operation of a partnership charter the campus received an unacceptable performance rating, except as provided by 19 Administrative Code 97.1077(e) (related to a campus that operates a partnership charter for less than a year). *19 TAC 97.1062(b)*

The Texas Education Agency (TEA) will not withdraw or postpone issuing any orders or determinations required or authorized that arise due to the performance rating from the school year prior to the school year in which the campus qualifies for the intervention pause, and any order or determination will resume upon expiration of the intervention pause.

Any intervention or sanction not covered by the intervention pause 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.

TEA will not pursue interventions under Education Code 39A.101–39A.109 and 39A.111 for a campus eligible for an intervention pause if one of the school years eligible for an intervention pause results in an acceptable or higher overall rating.

If after the expiration of the intervention pause a campus receives an unacceptable rating, TEA will apply the requisite interventions

that apply to the consecutive year that corresponds to the campus's actual number of consecutive years of unacceptable performance minus the number of intervention pause years and, if applicable, accounting for the modification under 19 Administrative Code 97.1062(c).

If a campus qualifies for an intervention pause for a school year after the conclusion of the school year in which an order is authorized under Education Code 39A.111, the intervention under Education Code 39A.111 will not pause.

A campus that receives an intervention pause will still receive an accountability rating for that school year.

Performance of students at a campus that receives an intervention pause shall be considered in the accountability rating of the district and the application of an intervention pause to a campus shall not pause or alter any intervention applicable to the district or other campuses.

*Appeal* A determination under this section that arises from the application of Education Code 28.020 is final and may not be appealed.

*Partial Year* A partial school year that results in an intervention pause under 19 Administrative Code 97.1077(b) or (c) constitutes one full year of a pause. This provision expires on September 1, 2023.

*19 TAC 97.1062(d), (f)-(n)*

*Additional Exemption* A campus that receives an exemption from a sanction or other action may receive another exemption while operating under a subsequent contract only if the campus receives approval for the exemption from the commissioner. *Education Code 11.174(g)*

*Funding for Certain Students* A district that enters into a contract is entitled to receive for each student in average daily attendance at the campus an amount equivalent to the difference, if the difference results in increased funding, between the amount described by Education Code 12.106 and the amount to which the district would be entitled under this Education Code Chapter 428. This section applies only to a district that does not appoint a majority of the governing body of the charter holder. *Education Code ~~42.2511~~48.252*

*Consultation with Campus Personnel* Before entering into a contract, the district must consult with campus personnel regarding the provisions to be included in the contract between the district and the open-enrollment charter school. All rights and protections afforded by current employment contracts or agreements may not be affected by the contract entered into between a district and an open-enrollment charter school. *Education Code 11.174(c)*

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Notice to Commissioner	A district proposing to enter into a contract with a campus or program charter shall notify the commissioner of the district's intent to enter into the contract according to commissioner rules. The commissioner shall notify the district whether the proposed contract is approved not later than the 60th day after the date the commissioner receives notice of the proposed contract and all information required by the commissioner to be submitted. If the commissioner fails to notify the district that the proposed contract has been approved or denied within the period prescribed by this subsection, the proposed contract is considered approved. <i>Education Code 11.174(k)</i>
Enrollment Eligibility	<p>The contract must include a provision addressing student eligibility for enrollment.</p> <p>The contract must provide that any student residing in the attendance zone of the campus as the attendance zone existed before operation of the campus under the contract shall be admitted for enrollment at the campus. The contract must establish enrollment preference for students who do not reside in the attendance zone as follows:</p> <ol style="list-style-type: none"> <li>1. Other students residing in the school district in which the campus is located; and</li> <li>2. Students who reside outside the school district.</li> </ol> <p><i>Education Code 11.174(h), (i)</i></p>
Operating Partner	An operating partner means a state authorized open-enrollment charter school or an eligible entity as defined by Education Code 12.101(a). <i>19 TAC 97.1075(b)(1)</i>
<p><i>Conferred Authority</i></p> <p>Staffing Authorities</p>	<p>The district must confer, at a minimum, the following enhanced authorities to the operating partner:</p> <ol style="list-style-type: none"> <li>1. The operating partner must have authority to employ and manage the campus chief operating officer, including the initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.</li> <li>2. The operating partner must have authority over the employees of the operating partner, including initial and final non-delegable authority for the operating partner to employ and/or manage all of the operating partner's own administrators, educators, contractors, or other staff. Such authority includes</li> </ol>

the authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment and establish any other terms of employment.

3. The operating partner must have authority over the assignment of all district employees to the campus, including initial and final authority to approve the assignment of all district employees or contractors to the campus, as well as initial and final authority to supervise, manage, and rescind the assignment of any district employee or district contractor from the campus.
4. The operating partner must directly manage the instructional staff described above who provide services to at least a majority of the students.

*19 TAC 97.1075(c)(1)*

*Other Authorities*

The operating partner must have:

1. Initial and final authority to approve all curriculum decisions beyond the minimum requirements under regulation, lesson plans, instructional strategies, and instructional materials as defined by law;
2. Initial and final authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, special education students, and other statutorily defined populations;
3. Initial and final authority to set the school calendar and daily schedule, which may differ from those in other district campuses;
4. Initial and final authority to approve all assessments that are not required by the state of Texas; and
5. Initial and final authority to adopt and implement the campus budget. The governing body of the operating partner shall approve the campus budget in a meeting held under the Texas Open Meetings Act [see BE]. Notwithstanding such budget authority, the operating partner's expenditures must comply with the applicable restrictions on the use of state and federal funds.

*19 TAC 97.1075(c)(2)*

Performance  
Contract

To contract to partner to operate under Education Code 11.174, the district's board must grant the operating partner a campus charter under Education Code Chapter 12, Subchapter C. The charter



must include performance expectations memorialized in a performance contract as required by law. The performance contract must include, at a minimum, the following:

1. A description of enhanced authorities as outlined above;
2. Academic performance expectations and goals, which shall include:
  - a. For campuses that are paired for accountability purposes, specific annual targets for improved student academic performance;
  - b. For campuses issued an accountability rating under Education Code 39.054, a specific annual target for the overall campus academic rating and a specific target for student growth based on the School Progress Domain; and
  - c. Specific consequences in the event that the operating party does not meet the annual academic performance expectations and goals described in the performance contract;
3. Annual financial performance expectations and goals, which shall include:
  - a. The completion of an annual financial report of the operating partner meeting the expectation outlined in 19 Administrative Code 109.23;
  - b. Receipt of an unqualified audit opinion, in connection with the annual financial report required above; and
  - c. Specific consequences in the event that the operating partner does not meet the annual financial performance expectations and goals described in the performance contract;
4. A description of the campus enrollment and expulsion policies that must comply with Education Code 11.174(i);
5. A contract term of up to ten years as required by Education Code 12.0531, with a provision specifying a requirement for a public hearing at least 30 days prior to any district action to terminate the contract for an operating partner that successfully met the performance expectations and goals described in the performance contract;
6. A contract term stating that the campus is exempt from laws and rules to the fullest extent allowed by the Education Code,



Chapter 12, Subchapter C, and is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract;

- 7. Service-level agreements that describe and allocate shared resources and services the district provides to the operating partner, which may include:
  - a. Facility use and related matters;
  - b. Transportation;
  - c. Specific education program services, such as providing special education services; and
  - d. Access to other resources and services as agreed between the parties;
- 8. A per-pupil allocation from the district to the operator that provides a student level allocation of local, state, and federal funds received by the district;
- 9. A description of the educational plan for the campus;
- 10. An assurance that the district has consulted with campus personnel regarding the provisions included in the performance contract and that the rights and protections afforded by current employment contracts or agreements shall not be affected by this contract as required by Education Code 11.174(c); and
- 11. A description of the consequences in the instance that either the district or the operating partner breaches the contract. The contract may not be contingent on any rating issued by TEA to the campus prior to the operation of the campus by the operating partner.

*19 TAC 97.1075(d); Education Code 12.0531*

TEA Monitoring

The commissioner shall continue to evaluate and assign overall and domain performance ratings under Education Code 39.054 to the campus. In order to qualify for ongoing benefits subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests or monitoring visits deemed necessary by the TEA staff to monitor the ongoing eligibility of the partnership. *19 TAC 97.1075(g)*

**Entity Granted a Charter by the District**

Title 19 Administrative Code 97.1079 applies only to districts that intend to contract to partner to operate the district campus with, on

approval by the commissioner, an entity granted a charter by the district under Education Code Subchapter C, Chapter 12.

Definitions

*Eligible Entity*

“Eligible entity” means an institution of higher education, a non-profit organization, or a governmental entity. For applicants seeking approval of an institution of higher education, which has been granted a charter in accordance with Education Code Chapter 12, Subchapter E, the commissioner will treat the institution of higher education as an open-enrollment charter.

*Campus*

“Campus” means an organization unit operated by a district that is eligible to receive a campus performance rating in the state accountability system, including a rating of Not Rated or Not Rated: Data Integrity Issues. This definition includes a charter school campus.

*Applicant*

“Applicant” means a district seeking approval to receive benefits under Education Code 11.174.

*Proposed Operating Partner*

“Proposed operating partner” means an eligible entity seeking approval in coordination with a district to contract to partner to operate a campus.

*19 TAC 97.1079, .1051(3); Education Code 12.101(a)*

Eligibility Approval Process

TEA shall review eligibility approval requests. If TEA determines that an eligibility approval request does not meet the eligibility criteria in Education Code 11.174, TEA shall notify the applicant and allow ten business days for the applicant to submit any missing or explanatory documents.

If, after giving the applicant opportunity to provide supplementary documents, TEA determines that the eligibility approval request remains incomplete and/or the eligibility requirements have not been met, the eligibility approval request will be denied. If the documents are not timely submitted, TEA shall remove the eligibility approval request without further processing.

*19 TAC 97.1079(d)*

*Review Panel*

Applicants with complete eligibility approval requests shall be reviewed by an external eligibility approval request review panel selected by the commissioner, in accordance with the procedures and criteria established in the eligibility approval request form. The recommendation, ranking, or other type of endorsement by a member or members of the review pane is not binding on the commissioner. *19 TAC 97.1079(d)(4)–(5)*

*Public Information*

All parts of the district’s eligibility approval request are releasable under the Texas Public Information Act [see GBA] and will be

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posted to the TEA website. Information described in 19 Administrative Code 97.1079(d)(6) must be excluded or redacted from an eligibility approval request. *19 TAC 97.1079(d)(6)*

*Criteria for  
Approval*

The commissioner shall consider the criteria described in 19 Administrative Code 97.1079(d)(8) when determining approval to contract to partner to operate a campus and receive benefits under Education Code 11.174(a)(2). *19 TAC 97.1079(d)*

*Appeals*

A decision made by TEA to deny, remove, or return an eligibility approval request is a final administrative decision of TEA and may not be appealed under Education Code 7.057. *19 TAC 97.1079(e)*

**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	STUDENT GOALS AND OBJECTIVES
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
<a href="#">FFBA</a>	<a href="#">Trauma-Informed Care</a>
FFC	Student Support Services
FFD	Student Insurance
FFE	Student Assistance Programs/Counseling
FFEA	Comprehensive Guidance Program
FFEB	Substance Abuse
FFF	Student Safety
FFFA	Supervision of Students
FFFB	Safety Patrols
FFFD	Bicycle/Automobile Use
FFFF	School Buses
FFG	Child Abuse and Neglect

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## SECTION F: STUDENTS

FFH	Freedom from Discrimination, Harassment, and Retaliation
FFI	Freedom from Bullying
FG	STUDENT AWARDS AND SCHOLARSHIPS
FH	STUDENT VOLUNTEERS
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 Telecommunications/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
FOB	Out-of-School Suspension
FOC	Placement in a Disciplinary Alternative Education Setting

**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**

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

**Nondiscrimination** A district shall provide equal opportunities to all individuals within its jurisdiction or geographic boundaries. *Education Code 1.002(a)*

No officer or employee of a district shall, when acting or purporting to act in an official capacity, refuse to permit any student to participate in any school program because of the student’s race, religion, color, sex, or national origin. *Civ. Prac. & Rem. Code 106.001*

A district may not deny services to any individual eligible to participate in its special education program, but it shall provide individuals with disabilities special educational services as authorized by law. *Education Code 1.002(b)*

**Federal Funding Recipients** No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination by any district that receives federal financial assistance, on the basis of any of the following protected characteristics:

1. Sex.
2. Race, color, or national origin.
3. Disability, or relationship or association with an individual with a disability. [See EHB, EHBA series, and GA]
4. Age.

*20 U.S.C. 1681 (Title IX); 42 U.S.C. 2000d (Title VI); 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act); 29 U.S.C. 794 (Section 504); 42 U.S.C. 12132 (Americans with Disabilities Act [ADA]); 42 U.S.C. 6101 et. seq. (Age Discrimination Act of 1975)*

**JW 7/6/19: Statutory tightening.**

**Sexual Harassment** Sexual harassment of students is discrimination on the basis of sex under Title IX. *Franklin v. Gwinnett County Schools, 503 U.S. 60 (1992)* [See also DIA and FFH]

**Human Rights Coordinator** A district shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, and the ADA. The district shall notify all students and employees of the name, office address, and telephone number of the employee(s) so designated.

**Grievance Procedures** A district shall adopt and publish grievance procedures for prompt and equitable resolution of student complaints alleging discrimination under these statutes. [See FNG]

*34 C.F.R. 106.8 (Title IX), 104.7 (Section 504)*

Retaliation	A district shall not coerce, intimidate, threaten, retaliate against, or interfere with any person who attempts to assert a right protected by the above laws or cooperates with investigation and enforcement proceedings under these laws. <i>34 C.F.R. 100.7(e) (Title VI), 104.61 (Section 504), 106.71 (Title IX)</i>
<b>Students with Learning Difficulties</b>	The Texas Education Agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Education Code 29.004 or for aids, accommodations, or services under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794). Each school year, a district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means. <i>Education Code 26.0081(c)</i>
<b>Disability Discrimination</b>	
ADA	Under the Americans with Disabilities Act (ADA), no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a district, or be subjected to discrimination by the district. <i>42 U.S.C. 12132; 28 C.F.R. 35.130</i>
Section 504	Under Section 504 of the Rehabilitation Act, no otherwise qualified individual with a disability shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. <i>29 U.S.C. 794(a)</i>
Definitions	
<i>"Student with a Disability"</i>	A "student with a disability" is one who has a physical or mental impairment that substantially limits one or more of the student's major life activities, has a record of having such an impairment, or is being regarded as having such an impairment.  The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.  An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.



A student meets the requirement of being “regarded as” having an impairment if the student establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of 6 months or less.

*29 U.S.C. 705(20)(B), 42 U.S.C. 12102(1), (3)–(4)*

*“Qualified Individual with a Disability”*

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a district. *42 U.S.C. 12131(2)*

*“Major Life Activities”*

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activity” also includes the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *42 U.S.C. 12102(2)*

Reasonable Modification

A district shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the district can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. *28 C.F.R. 35.130(b)(7)*

Direct Threat

“Direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided below. *28 C.F.R. 35.104*

The ADA does not require a district to permit an individual to participate in or benefit from the services, programs, or activities of that district when that individual poses a direct threat to the health or safety of others.

In determining whether an individual poses a direct threat to the health or safety of others, a district must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

1. The nature, duration, and severity of the risk;
2. The probability that the potential injury will actually occur; and
3. Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

*28 C.F.R. 35.139*

Free Appropriate  
Public Education  
(FAPE)

A district shall provide a free appropriate public education to each qualified student with a disability within the district's jurisdiction, regardless of the nature or severity of the student's disability.

A student with a disability is "qualified" if he or she is between the ages of three and 21, inclusive. *20 U.S.C. 1412(ba)(1); 34 C.F.R. 104.3(l)(2)*

**JW 7/6/19: Citation correction.**

An appropriate education is the provision of regular or special education and related services that are:

1. Designed to meet the student's individual educational needs as adequately as the needs of students who do not have disabilities are met; and
2. Based on adherence to procedures that satisfy federal requirements for educational setting, evaluation and placement, and procedural safeguards, as set forth below.

*34 C.F.R. 104.33(b)*

Implementation of an individualized education program (IEP) under IDEA is one means for providing FAPE. *34 C.F.R. 104.33(b)(2)*

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**Note:** See EHBA series for policies regarding the provision of special education to students with disabilities under IDEA who require special education in order to benefit from a free appropriate public education.

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Educational Setting

A district shall place a student with a disability in the regular educational environment, unless the district demonstrates that education in the regular environment with the use of supplemental aids and services cannot be achieved satisfactorily. *34 C.F.R. 104.34(a)*

In providing or arranging for nonacademic and extracurricular services and activities, a district shall ensure that a student with a disability participates with students who do not have disabilities to the

maximum extent appropriate to the needs of the student with a disability. 34 C.F.R. 104.34(b), 104.37

Evaluation and Placement

A district shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

*Evaluation Procedures*

A district shall establish standards and procedures for the evaluation and placement which ensure that:

1. Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
2. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
3. Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

*Placement Procedures*

In interpreting evaluation data and in making placement decisions, a district shall:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior;
2. Establish procedures to ensure that information obtained from all such sources is documented and carefully considered;
3. Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
4. Ensure that the placement decision is made in conformity with 34 C.F.R. 104.34.

*Reevaluation* A district shall establish procedures for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act [now IDEA] is one means of meeting this requirement.

*34 C.F.R. 104.35*

*Military Dependents* In compliance with the requirements of Section 504, and with Title II of the Americans with Disabilities Act (42 U.S.C. Sections 12131–12165), the district shall make reasonable accommodations and modifications to address the needs of incoming military dependents with disabilities, subject to an existing Section 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the district from performing subsequent evaluations to ensure appropriate placement of the student. *Education Code 162.002 art. V, § C* [See FDD]

Procedural Safeguards A district shall establish a system of procedural safeguards with respect to the identification, evaluation, and educational placement of persons who need or are believed to need special instruction or related services.

The system shall include notice, an opportunity for the student’s parent or guardian to examine relevant records, an impartial hearing with the opportunity for participation by the student’s parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of IDEA is one means of meeting this requirement. *34 C.F.R. 104.36*

**Homeless Children**  
wWho aAre  
Homeless

A district shall adopt policies and practices to ensure that homeless children are not stigmatized or segregated on the basis of their homeless status. [See FDC]

Liaison A district shall designate an appropriate staff person, able to carry out the required duties, as the district liaison for homeless children. A district shall inform school personnel, service providers, advocates working with homeless families, parents and guardians of homeless children, and homeless children of the duties of the liaison. [See FFC]

*42 U.S.C. 11432(g)(1)(J)(i), (ii), (g)(6)(B)*

JW 7/2/19: Person first changes. The USC still says homeless children. I’m wondering if the “who are” changes make this statute less readable. If so, we can skip these changes.

JW 7/24/19: I decided to only change the margin note and leave the language in the statutory language. It’s more readable and less editorial.

**Religious Freedom**

A district may not substantially burden a student’s free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003* [See also DAA and GA]

Adverse Action Prohibited

Notwithstanding any other law, a district may not take any adverse action against any person based wholly or partly on the person’s membership in, affiliation with, or contribution, donation, or other support provided to a religious organization. ~~Gov’ernment~~ Code 2400.002 [See GA]

**JW 7/2/19: SB 1978, effective 9/1/2019. MT says he is putting the details in GA.**

**Discrimination on the Basis of Sex**

No person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination by any district receiving federal financial assistance. *20 U.S.C. 1681(a)*

A district shall not provide any course or otherwise carry out any of its educational programs or activities separately on the basis of sex, or require or refuse participation therein on the basis of sex, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses. *34 C.F.R. 106.34*

Separate Facilities

A district may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for one sex shall be comparable to the facilities provided for the other sex. *34 C.F.R. 106.33*

Human Sexuality Classes

Portions of classes in elementary and secondary school that deal ~~exclusively~~ primarily with human sexuality may be conducted in separate sessions for boys and girls.

**JW 7/6/19: Statutory tightening.**

Vocal Music Activities

A district may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

*34 C.F.R. 106.34*

Single-Sex Programs

A district shall not, on the basis of sex, exclude any student from admission to an institution of vocational education or any other school or educational unit operated by the district ~~unless the district otherwise makes available to the student, pursuant to the same~~

~~policies and criteria of admission, comparable courses, services, and facilities. 34 C.F.R. 106.35~~

**JW 7/6/19: I cannot determine where the deleted language comes from, but it does not come from this CFR provision. 106.34(b)(i)(v)?**

**Pregnancy and Marital Status** A recipient shall not apply any rule concerning a student’s actual or potential parental, family, or marital status that treats students differently on the basis of sex. *34 C.F.R. 106.40* [See FND]

**Physical Education Classes** A district may group students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

**Skills Assessment** Where use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, a district shall use appropriate standards that do not have such effect.

**Contact Sports** A district may separate students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

*34 C.F.R. 106.34, .43*

**JW 7/6/19: Citation correction for skills assessment.**

**Athletic Programs** A district shall not discriminate, on the basis of sex, in interscholastic or intramural athletics or provide any such athletics separately on such basis.

**Single-Sex Teams** A district may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but not for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.

**Equal Athletic Opportunities** A district that operates or sponsors interscholastic or intramural athletics shall provide equal athletic opportunity for members of both sexes. The following factors shall be considered in determining whether a district provides equal athletic opportunities:

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

2. Provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms and practice and competitive facilities;
8. Provision of medical and training facilities and services;
9. Provision of housing and dining facilities and services; and
10. Publicity.

*34 C.F.R. 106.41*

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**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                       | 1. | The person and either parent reside in the district.   |
| Conservator                              | 2. | 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 | 3. | The person and his or her guardian or other person having lawful control under an order of a court reside in the district.   |
| Students Living Separate and Apart       | 4. | 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: <ul style="list-style-type: none"><li>a. Engaged in conduct that resulted in removal to a disciplinary alternative education program or expulsion within the preceding year;</li><li>b. Engaged in delinquent conduct or "conduct in need of supervision" and is on probation or other conditional release for that conduct; or</li><li>c. Been convicted of a criminal offense and is on probation or other conditional release.</li></ul> |

*Education Code 25.001(a)–(b), (d)*

~~Homeless~~ Students  
[Who Are Homeless](#)

5. The person is homeless. [See also FDC]
- a. ["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.](#)
  - a.b. "Homeless children" under the McKinney-Vento Homeless Assistance Act, means children or youths who lack a fixed, regular, and adequate nighttime residence; and includes:



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- (1) 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;
- (2) 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;
- (3) Children who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- (4) Migratory children living in circumstances described above.

“Migratory child” means a child who made a qualifying move in the preceding 36 months:

- (a) As a migratory agricultural worker or a migratory fisher; or
- (b) With, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher. [See EEB]

~~b. A person is homeless, for purposes of Education Code 25.001(b)(5), regardless of the residence of the person, of either parent, or of the person's guardian or other person having lawful control, if:~~

- ~~(1) The person lacks a fixed, regular, and adequate nighttime residence; or~~
- ~~(2) The person has 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, including a car, park, abandoned building, bus or train station, airport, or camping ground;~~
- ~~(3) The person lives in a supervised publicly or privately operated shelter designated to provide temporary living accommodations (including hotels and~~

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~~motels paid for by government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);~~

~~(4) The person resided in a shelter or place not meant for human habitation and is exiting an institution where he or she temporarily resided;~~

~~(5) The person will imminently lose their housing, has no subsequent residence identified, and lacks the resources or support networks needed to obtain other housing; and~~

~~(6) The person is an unaccompanied youth or part of a homeless family with children and youth defined as homeless under other federal statutes who:~~

~~(a) Has experienced a long-term period without living independently in permanent housing;~~

~~(b) Has experienced persistent instability as measured by frequent moves over such period; and~~

~~(c) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.~~

Education Code [5.001\(1-a\)](#), 25.001(b)(5); 20 U.S.C. 6399; 42 U.S.C. 11434a(2);

[JW 6/14/19: SB 668, streamlining homeless definitions effective June 10 2019. 42 U.S.C. 11302](#)

[SB 668 deletes the reference to the other federal definition of homeless.](#)

Foreign Exchange Students

6. 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:
  - a. This requirement would impose a financial or staffing hardship on the district;

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- b. The admission would diminish the district’s ability to provide high-quality education services for the district’s domestic students; or
- c. 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

- 7. 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

- 8. 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

- 9. The person does not reside in the district but the grandparent of the person:
  - a. Resides in the district; and
  - b. Provides a substantial amount of after-school care for the person as determined by the board.

*Education Code 25.001(b)(9)*

Residence Homestead

- ~~9.~~10. 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)

a. JW 6/13/19: Residence homestead added by HB 2526, effective June 10, 2019. Resides in the district; and

b. Provides a substantial amount of after-school care for the person as determined by the board.

Education Code 25.001(b)(9)

**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 item 4 above, a board shall determine whether an applicant qualifies as a

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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 ~~(see above)~~ 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.

A person who establishes residency under this provision shall provide to the district proof of residence in the district’s attendance zone not later than the 10th tenth 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-1)–(c-2)*

**JW 6/13/19: HB 1597, effective May 28, 2019.**

**Does the (see above) make sense? The statute says “under subsection (b).”**

**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 extra-curricular, 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

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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)*

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**Note:** The [Authorization Agreement for Nonparent Relative \(PDF\)](#)<sup>1</sup> is available on the DFPS website.

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**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)*

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**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 is 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.



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42 U.S.C. 675(1)(G), 675a [See CNA]

**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 ~~school~~ district accepts tuition is not counted for purposes of allocating state funds to the district.

*Education Code 25.0031*

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**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](#)<sup>2</sup> (SEVP) under the Department of Homeland Security.

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**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



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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 district school, the parent or other person, or the ~~school~~ 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 as defined by the commissioner in the *Student Attendance Accounting Handbook*.
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.

Students shall not be denied enrollment or be removed solely because they fail to provide the documentation required in items 1 and 2, above.

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); 19 TAC 129.1(a)–(b)*

A district must furnish information under items 1 and 2 not later than the tenth 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

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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 an Intensive Summer Program under Education Code 29.098~~ or in a similar intensive program.

*Education Code 25.008*

**JW 6/26/19: TEC 29.098 repealed by HB 3, conforming amendments, effective September 1, 2019. (page 300)**

**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

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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)*

**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

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- 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)*

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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)*

**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~~9 years of age and under 26 years of age and is enrolled in an adult high school diploma and industry certification charter school ~~pilot~~ program under Education Code 29.259.

~~6.~~ [JW 6/14/19: HB 1051, effective 6-14-2019,](#)

- ~~2.~~ The person is enrolled in prekindergarten under Education Code 29.153 ~~or Subchapter E-1, Chapter 29~~ [see EHBG].

~~2.~~ [JW 6/26/19: HB 3, Article 3, Section 3.016. Conforming amendments.](#)

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), ~~482~~.003*

[JW 6/26/19: HB 3, effective 9-1-2019, section 1.013.](#)

**Screening**

The principal of each district school shall ensure that each student admitted to that school has complied with requirements for screen-

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ing 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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<sup>1</sup> Authorization Agreement for Nonparent Relative (PDF): <http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2638.pdf>

<sup>2</sup> Student and Exchange Visitor Program: <https://www.ice.gov/sevis>

An eligible student may attend a public school in the district in which the student resides or may use a public education grant to attend any other district chosen by the student's parent. *Education Code 29.201*

**Eligible Students**

A student is eligible to receive a public education grant or to attend another public school in the district in which the student resides if the student is assigned to attend a public school campus assigned an unacceptable rating that is made publicly available under Education Code 39.054 for:

1. The student achievement domain under Education Code 39.053(c)(1); and
2. The school progress domain under Education Code 39.053(c)(2). [See AIA]

After a student has used a public education grant to attend a school in a district other than the district in which the student resides:

1. The student does not become ineligible for the grant if the school on which the student's initial eligibility is based no longer meets the criteria described above; and
2. The student becomes ineligible for the grant if the student is assigned to attend a school that does not meet the criteria described above.

*Education Code 29.201, .202*

**Funding**

A district is entitled to a public education grant allotment for each eligible student using a public education grant.

A district is entitled to additional facilities assistance under Education Code ~~42.4104~~[8.301](#) if the district agrees to:

1. Accept a number of students using public education grants that is at least one percent of the district's average daily attendance for the preceding school year; and
2. Provide services to each student until the student either voluntarily decides to attend a school in a different district or graduates from high school.

Average Daily  
Attendance

A student who uses a public education grant to attend a public school in a district other than the district in which the student resides is included in the average daily attendance of the district in which the student attends school.

*Education Code 29.203(a)–(c)*



**JW 7/3/19: HB 3, effective 9-1-2019, Section 3.034.**

<b>Admission</b>	A district chosen by a student's parent under Education Code 29.201 above is entitled to accept or reject the application for the student to attend school in that district, but may not use criteria that discriminate on the basis of the student's race, ethnicity, academic achievement, athletic abilities, language proficiency, sex, or socio-economic status.
Priorities	A district that has more acceptable applicants for attendance under public education grants than available positions must give priority to students at risk of dropping out of school, as defined by Education Code 29.081 [see EHBC] and must fill the available positions by lottery.
Exception	To achieve continuity in education, however, a district may give preference over at-risk students to: <ol style="list-style-type: none"> <li>1. Enrolled students; and</li> <li>2. Siblings or other children residing in the same household as enrolled students, for the convenience of parents, guardians, or custodians of those children.</li> </ol>
<b>Tuition</b>	A district chosen by a student's parent under a public education grant may not charge the student tuition.  <i>Education Code 29.203(d)–(e)</i>
<b>Transportation</b>	The district in which a student resides shall provide each student attending a school in another district under a public education grant transportation free of charge to and from the school the student would otherwise attend. <i>Education Code 29.203(f)</i>
<b>Contract for Services</b>	The board may contract for the provision of educational services to a student eligible to receive a public education grant. <i>Education Code 29.205</i>
<b>Notice to Parent</b>	Not later than February 1 of each year, a district shall notify the parent of each student in the district assigned to attend a campus described by Education Code 29.202 above that the student is eligible for a public education grant. The notice must contain a clear, concise explanation of the public education grant program and of the manner in which the parent may obtain further information about the program. <i>Education Code 29.204(b)</i>



~~Homeless Children~~  
~~Who are~~  
Homeless

As a condition of receiving funds under the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), a district serving ~~homeless~~-children who are homeless shall, according to the child's best interest:

1. Continue the child's education in the school of origin for the duration of homelessness:
  - a. If the child's family becomes homeless between academic years or during an academic year; and
  - b. For the remainder of the academic year, if the child becomes permanently housed during an academic year; or
2. Enroll the child in any school that nonhomeless students who live in the attendance area in which the child is actually living are eligible to attend.

42 U.S.C. 11432(g)(3)(A) [For definition of "~~homeless children~~children who are homeless," see FD]

**JW 6/14/19: Consistency with SB 688 and best practice. Other changes made throughout. It's not strict with the statutory language so I can change it back if anyone disagrees.**

**Definitions**

"Unaccompanied Youth"

"Unaccompanied youth" includes a ~~homeless~~-child who is homeless or youth not in the physical custody of a parent or guardian. 42 U.S.C. 11434A

"Enrollment"

"Enroll" and "enrollment" include attending classes and participating fully in school activities.

"School of Origin"

"School of origin" means the school that the child attended when permanently housed or the school in which the child was last enrolled, including a preschool.

When the child completes the final grade level served by the school of origin, the term "school of origin" shall include the designated receiving school at the next grade level for all feeder schools.

42 U.S.C. 11432(g)(3)(I)

**School Stability**

In determining the best interest of a ~~homeless child~~child who is homeless, a district shall:

1. Presume that keeping the child in the school of origin is in the child's best interest, except when doing so is contrary to the request of the child's parent or guardian, or (in the case of an unaccompanied youth) the youth;

2. Consider student-centered factors related to the child's best interest, including factors related to the impact of mobility on achievement, education, health, and safety of ~~homeless~~-children who are homeless, giving priority to the request of the child's parent or guardian or the unaccompanied youth;
3. If, after conducting the best interest determination based on consideration of the presumption in item 1 above and the student-centered factors in item 2 above, the district determines that it is not in the child's best interest to attend the school of origin or the school requested by the parent or guardian or the unaccompanied youth, provide the parent, guardian, or unaccompanied youth with a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth, including information regarding the right to appeal as set forth at ~~ENROLLMENT DISPUTES~~Enrollment Disputes, below; and
4. In the case of an unaccompanied youth, ensure that the homeless liaison [see FFC] assists in placement and enrollment decisions under these provisions, gives priority to the views of such unaccompanied youth, and provides the notice to such youth of the right to appeal as set forth at ~~ENROLLMENT DISPUTES~~Enrollment Disputes, below.

*42 U.S.C. 11432(g)(3)(B)*

**Contact Information**

A district may require the parent or guardian of a ~~homeless child~~child who is homeless to submit contact information. *42 U.S.C. 11432(g)(3)(H)*

**Immediate Enrollment**

The school selected in accordance with these provisions shall immediately enroll a ~~homeless child~~child who is homeless, even if the child:

1. Is unable to produce records normally required for enrollment, such as previous academic record, records of immunization and other required health records, proof of residency, or other document; or
2. Has missed application or enrollment deadlines during any period of homelessness.

*42 U.S.C. 11432(g)(3)(C)*

**Enrollment Disputes**

If a dispute arises over eligibility, or school selection or enrollment in a school:

1. The child shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals;
2. The parent or guardian of the child or an unaccompanied youth shall be provided with a written explanation of any decisions related to school selection or enrollment made by the district, including the rights of the parent, guardian, or unaccompanied youth to appeal such decisions.
3. The parent, guardian, or unaccompanied youth shall be referred to the homeless liaison [see FFC], who shall carry out the dispute resolution process as expeditiously as possible after receiving notice of the dispute; and
4. In the case of an unaccompanied youth, the liaison shall ensure that the youth is immediately enrolled in the school in which the youth seeks enrollment pending resolution of such dispute.

*42 U.S.C. 11432(g)(3)(E) [See FNG]*

#### **School Placement**

As a condition of receiving funds under the McKinney-Vento Act, TEA shall submit to the U.S. Secretary of Education a plan that includes assurances that a district will adopt policies and practices to ensure that ~~homeless~~-children who are homeless are not stigmatized or segregated on the basis of their status as homeless. *42 U.S.C. 11432(g)(1)(J)(i)*

The choice regarding placement shall be made regardless of whether the child lives with the ~~homeless~~-parents who are homeless or has been temporarily placed elsewhere. *42 U.S.C. 11432(g)(3)(F)*

#### **Records**

##### Academic

The enrolling school shall immediately contact the school last attended by the child to obtain relevant academic and other records. *42 U.S.C. 11432(g)(3)(C)(ii)*

##### Health

If the child needs to obtain immunizations or other required health records, the enrolling school shall immediately refer the child's parent or guardian or an unaccompanied youth to the district homeless liaison [see FFC] who shall assist in obtaining necessary immunizations or screenings, or immunization or other required health records. [See also FFAB] *42 U.S.C. 11432(g)(3)(C)(iii)*

##### Maintenance

Any record ordinarily kept by a school, including immunization or other required health records, academic records, birth certificates, guardianship records, and evaluation for special services or programs, regarding each ~~homeless~~-child who is homeless shall be maintained so that the records involved are available, in a timely

	<p>fashion, when a child enters a new school or district, and in a manner consistent with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) [see FL]. <i>42 U.S.C. 11432(g)(3)(D)</i></p>
Privacy	<p>Information about <del>a homeless child</del><u>the 's</u>-living situation <u>of a child who is homeless</u> shall be treated as a student education record, and shall not be deemed to be directory information under FERPA. [See FL] <i>42 U.S.C. 11432(g)(3)(G)</i></p>
<b>Comparable Services</b>	<p>The district shall provide a <del>homeless</del>-child <u>who is homeless</u> with services that are comparable to services offered to other students in the school in which the child is enrolled, including:</p> <ol style="list-style-type: none"><li>1. Transportation services;</li><li>2. Educational services for which the child meets the eligibility criteria;</li><li>3. Programs in career and technical education;</li><li>4. Programs for gifted and talented students; and</li><li>5. School nutrition programs.</li></ol> <p><i>42 U.S.C. 11432(g)(4)</i></p>
<b>Coordination</b>	<p>A district serving <del>homeless</del> children <u>who are homeless</u> shall coordinate:</p> <ol style="list-style-type: none"><li>1. The provision of services with local social services agencies and other agencies or entities providing services to <del>homeless</del> children <u>who are homeless</u> and their families; and</li><li>2. Transportation, transfer of school records, and other interdistrict activities with other local educational agencies.</li></ol>
Housing Assistance	<p>If applicable, a district shall coordinate with state and local housing agencies responsible for developing the comprehensive housing affordability strategy described in the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705), to minimize educational disruption for children who become homeless.</p>
Purpose	<p>The coordination shall be designed to:</p> <ol style="list-style-type: none"><li>1. Ensure that <del>homeless</del>-children <u>who are homeless</u> are promptly identified and have access to, and are in reasonable proximity to, available education and related support services; and</li><li>2. Raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homelessness.</li></ol>

~~Homeless~~-Children  
who are Homeless  
with Disabilities

For children who are to be assisted both under the McKinney-Vento Act and under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), a district shall coordinate provision of services under the McKinney-Vento Act with the provision of programs for children with disabilities served by that district and other involved local educational agencies. [See EHBA series]

*42 U.S.C. 11432(g)(5)*

Barriers to  
Enrollment

A district shall review and revise any policies that may act as barriers to the identification or enrollment of ~~homeless~~-children who are homeless. A district shall give consideration to issues concerning transportation, immunization, residency, birth certificates, school records and other documentation, and guardianship. A district shall give special attention to ensuring the identification, enrollment, and attendance of ~~homeless~~-children who are homeless who are not currently attending school. *42 U.S.C. 11432(g)(7)*

**Website Information  
on Local Programs**

Each campus within a district with 3,000 or more students and located in a county with a population of at least 50,000 that maintains an Internet website shall post on the campus website information regarding local programs and services, including charitable programs and services, available to assist ~~homeless~~-students who are homeless.

A campus shall make a good faith effort to compile information and shall post the information compiled in a format and style that is easily understandable by students or parents, as appropriate based on the grade levels the campus offers.

A representative of a local program or service available to assist ~~homeless~~-students who are homeless may request to have information concerning the program or service posted on a campus website. A campus may determine the information that is posted on its website and is not required to post information as requested by the representative.

The district is not liable for any harm to a student that results in connection with a local program or service referred to on the website of a campus.

*Education Code 33.906*

**JW 6/14/19: Changes to TEC 339.906 are from SB 688, effective June 10, 2019.**

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**~~Other Related Policies:~~**

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~~AID—FEDERAL ACCOUNTABILITY STANDARDS~~

~~CNA—STUDENT TRANSPORTATION~~

~~EHBD—FEDERAL TITLE I PROGRAMS~~

~~FB—EQUAL EDUCATIONAL OPPORTUNITIES~~

~~FD—ADMISSIONS~~

~~FFAB—IMMUNIZATIONS~~

~~FFC—STUDENT SUPPORT SERVICES~~

~~FL—STUDENT RECORDS~~

~~FP—STUDENT FEES, FINES, AND CHARGES~~

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**Other Related Policies:**

- [AID—Federal Accountability Standards](#)
  - [CNA—Student Transportation](#)
  - [EHBD—Federal Title I Programs](#)
  - [FB—Equal Educational Opportunities](#)
  - [FD—Admissions](#)
  - [FFAB—Immunizations](#)
  - [FFC—Student Support Services](#)
  - [FL—Student Records](#)
  - [FP—Student Fees, Fines, and Charges](#)
-

ATTENDANCE  
COMPULSORY ATTENDANCE

FEA  
(LEGAL)

**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 / 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. An accelerated reading instruction program to which the student has been assigned under Education Code 28.006(g) [see EKC];
3. An accelerated instruction program to which the student is assigned under Education Code 28.0211 [see EIE];



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COMPULSORY ATTENDANCE

FEA  
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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)*

**JW 7/3/19: Just a note that the incentive aid information will go here, but it's not effective until 2020. HB 3, effective September 1, 2020**

**Exemptions**

A student is exempt from compulsory attendance requirements if:

Equivalency  
Diploma

1. The student is at least 17 years of age and has been issued a high school equivalency certificate or diploma.

Private or Home  
School

2. 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. *TEA v. Leeper, 893 S.W.2d 432 (Tex. 1994)*

Special Education—  
Nondistrict  
Placement

3. 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

4. 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,



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and covering the anticipated period of absence for the purpose of receiving and recuperating from remedial treatment.

Expulsion—No  
JJAEP

5. 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

6. The student is at least 17 years old, is attending a course of instruction to prepare for the high school equivalency examinations, and:

- a. Has the permission of the student's parent or guardian to attend the course;
- b. Is required by court order to attend the course;
- c. Has established a residence separate and apart from the student's parent, guardian, or other person having lawful control of the student; or

d. Is homeless ~~as defined by 42 U.S.C. 11302.~~

~~d.~~ **JW 6/14/19: SB 1688, effective June 10, 2019.**

High School  
Replacement  
Programs

7. 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

8. The student is at least 16 years old and is attending a course of instruction to prepare for the high school equivalency examinations, if:

- a. 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
- b. The student is enrolled in a Job Corps training program under the Workforce Investment Act of 1998, 29 U.S.C. 2801.

Other Exemption

9. The student is specifically exempted under another law.

*Education Code 25.086*

**Excused Absences  
for Compulsory  
Attendance  
Determinations**

A district shall excuse a student from attending school for the following purposes:

Religious Holy Days

1. Observing religious holy days. A student who is observing holy days is allowed up to one day of excused travel for traveling to the site where the student will observe the holy days

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- and up to one day of excused travel for traveling from that site.
- Court Appearances 2. Attending a required court appearance. A student who is attending a required court appearance is allowed up to one day of excused travel for traveling to the site where the student will attend the required court appearance and up to one day of excused travel for traveling from that site.
- Citizenship Proceedings 3. Appearing at a governmental office to complete paperwork required in connection with the student’s application for United States citizenship. A student who is appearing at a governmental office to complete such paperwork is allowed up to one day of excused travel for traveling to the site where the student will complete the paperwork and up to one day of excused travel for traveling from that site.
4. Taking part in a United States naturalization oath ceremony. A student who is taking part in such a ceremony is allowed up to one day of excused travel for traveling to the site where the student will take part in the ceremony and up to one day of excused travel for traveling from that site.
- Election Clerks 5. Serving as an election clerk. A student who is serving as an election clerk is allowed up to one day of excused travel for traveling to the site where the student will serve as an election clerk and up to one day of excused travel for traveling from that site. [See Early Voting Clerks, below]
- Children in Conservatorship of DFPS 6. If the 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.
- Education Code 25.087(b)(1); 19 TAC 129.21(j)(3)*
- Health-Care Appointments 7. Temporary absence resulting from an appointment with a health-care 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. The appointment must be supported by a document such as a note from the health-care professional. “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

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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); 19 TAC 129.21(j)(3) [See FEB]*

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); 19 TAC 129.21(j)(3)*

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:

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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); 19 TAC 129.21(j)(3)*

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 school work 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 ten 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;

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- 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 ten 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 1.75 million or more;
2. Justice courts; and
3. Municipal courts.

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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 have been excused by a school official or by the court or that one or more of the absences were involuntary, but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute truant conduct. The burden is on the child to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. 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)*

**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 ten or more days or parts of days within a six-month period in the same school year, a district shall within ten school days of the student's tenth absence refer the student to a truancy court for truant conduct under Family Code 65.003(a). [See FED] *Education Code 25.0951*

**Records**

A district must maintain records to reflect the average daily attendance for the allocation of Foundation School Program (FSP) funds and other funds allocated by [the Texas Education Agency \(TEA\)](#). The district must maintain records and make reports concerning student attendance and participation in special programs as required by the commissioner of education. The superintendent, principals, and teachers are responsible to the board and the state to maintain accurate, current attendance records. *19 TAC 129.21(a), (e)*

Districts shall use the student attendance accounting standards established by the commissioner to maintain records and make reports on student attendance and student participation in special programs. The official standards are described in TEA's *Student Attendance Accounting Handbook (SAAH)*. *19 TAC 129.1025*

The superintendent is responsible for the safekeeping of all attendance records and reports. The superintendent may determine whether the properly certified attendance records or reports for the school year are to be stored in the central office, on the respective school campuses of a district, or at another secure location. Regardless of where such records are filed or stored, they must be readily available for audit by TEA. *19 TAC 129.21(d)*

**Minimum Enrollment**

A student must be enrolled for at least two hours of instruction to be considered in membership for one half day, and for at least four hours of instruction to be considered in membership for one full day.

Full-Day Students

Students enrolled on a full-day basis may earn one full day of attendance each school day.

Half-Day Students

Students enrolled on a half-day basis may earn only one half day attendance each school day. Attendance is determined for these pupils by recording absences in a period during the half day they are scheduled to be present.

Alternative  
Attendance  
Accounting  
Program

Students who are enrolled in and participating in an alternative attendance accounting program approved by the commissioner will earn attendance according to the statutory and rule provisions applicable to that program.

**Attendance for State  
Funding Purposes**

Attendance for all grades shall be determined by the absences recorded in the second or fifth instructional hour of the day, unless the board adopts a policy, or delegates to the superintendent the authority to establish procedures for recording absences in an alternative hour, or unless the students for which attendance is being taken are enrolled in and participating in a commissioner-approved alternative attendance accounting program.



The established period in which absences are recorded may not be changed during the school year.

Students absent at the time the attendance roll is taken, during the daily period selected, are counted absent for the entire day, unless the students are enrolled in and participating in a commissioner-approved alternative attendance accounting program. Students present at the time the attendance roll is taken, during the daily period selected, are counted present for the entire day, unless the students are enrolled in and participating in a commissioner-approved alternative attendance accounting program.

*19 TAC 129.21(g)–(h)*

A student removed to a disciplinary alternative education program is counted in computing the average daily attendance of students in a district for the student's time in actual attendance in the program. *Education Code 37.008(f)*

### **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 *SAAH*.

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]

### **Exceptions**

A student not actually on campus when attendance is taken may be considered in attendance for FSP purposes if:

1. The student is participating in a board-approved activity under the direction of a member of a district's professional or paraprofessional staff, or an adjunct staff member who has a bachelor's degree and is eligible for participation in [the Teacher Retirement System of Texas \(TRS\)](#). [See FM]
2. The student is participating in a mentorship approved by district personnel to serve as one or more of the advanced measures needed to complete the Distinguished Achievement



Program outlined in 19 Administrative Code Chapter 74. [See EIF]

3. The student is absent for one of the purposes listed at Excused Absences for Compulsory Attendance Determinations in FEA(LEGAL).
4. The student is in attendance at a dropout recovery education program under Education Code 29.081. [See GNC]
5. The student's absence is permitted by other conditions related to off-campus instruction described in the *SAAH*.

*Education Code 25.087, 29.081(e), (f); 19 TAC 129.21(i)–(k)*

### Disasters

The commissioner ~~shall~~ 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 ~~shall~~ make the adjustment ~~required under~~ by 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 ~~428.00654~~(a), (c)*

**JW 7/3/19: HB 3, effective 9/1/2019, section 1.015.**

### Parental Consent to Leave Campus

Before a district may count a student in attendance under these provisions or in attendance when the student was allowed to leave campus during any part of the school day, the board must adopt a policy, or delegate to the superintendent the authority to establish procedures, addressing parental consent for a student to leave campus and the district must distribute the policy or procedures to staff and to all parents of students in the district. *19 TAC 129.21(l)*

**District Complaint or Referral**

Against Student

If a student fails to attend school without excuse on ten or more days or parts of days within a six-month period in the same school year, a district shall within ten school days of the student's tenth 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 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, or being the principal income earner for the student's family. [See ~~TRUANCY PREVENTION MEASURES~~ [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~~[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 Crim. Proc. 45.0541*

**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~~[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 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); 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; or
4. 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 information 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 ~~TAC-Administrative Code~~ 157.1122 (~~relating to~~ Notice). A district may request in writing an informal review of TEA's preliminary report in accordance with 19 ~~TAC-Administrative Code~~ 157.1123 (~~relating to~~ 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 of this code and Government Code Chapter 102, Government Code.

Code of Criminal Procedure 45.056(a), (c)

~~2.~~

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. ~~Pursuant to Code of Criminal Procedure 102.0174, t~~he 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. ~~the juvenile case manager fund.~~ Code of Criminal Procedure 45.056(b)

Priority

A juvenile case manager employed ~~under~~ jointly under Government Code Chapter 974791 shall give priority to cases brought under Education Codes 25.093 (parent contributing to nonattendance). Code of Criminal Procedure 45.056(e)

JW 8/9/19: Amy D. asked about this citation. I edited the policy to move the citation closer to the text. This is not from the legislative session. Also, TEC 25.094, cited in this section of the statute, was repealed prior to the 2019 lege session so I took out the reference.

## 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.

~~7.~~ 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)*

JW 7/7/19: SB 346, effective 1/1/20. The only change from the lege session is the section under funding, above. This section of policy was missing information and citations.

JW 8/9/19: edited (e)-(i) to (f)-(i)

**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)*

**Administering Medication**

Upon adoption of policies concerning the administration of medication to students by ~~school~~-district employees, [athe](#) district, [a](#)its board, and ~~a-district's~~its employees are immune as described below, provided:

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. 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.

**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 personal physician.

**Immunity from Civil Liability**

A district, a board, and its employees shall be immune from civil liability for damages or injuries resulting from the administration of medication to a student in accordance with this policy.

*Education Code 22.052(a), (b)*

[See DG regarding protection of nurses for refusal to perform acts.]

**Nursing Peer Review Committees**

"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 if:

1. For vocational nurses, 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 registered nurses.

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*

**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 FFAC 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 ~~school~~ 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)*

**Psychotropics and  
Psychiatric  
Evaluations**

A ~~school~~ 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 who is a registered nurse, advanced nurse practitioner, physician, or certified or appropriately credentialed mental health professional from recommending that a child be evaluated by an appropriate medical practitioner; 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.

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.

*Education Code 38.016*

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]*

### **Opioid Antagonist Medication**

A person or organization acting under a standing order issued by a prescriber may store an opioid antagonist and may distribute an opioid antagonist, provided the person or organization does not request or receive compensation for storage or distribution. *Health and Safety Code 483.104*

A prescriber may, directly or by standing order, prescribe an opioid antagonist to a person in a position to assist a person experiencing an opioid-related drug overdose. *Health and Safety Code 483.102; 22 TAC 170.6*

### Immunity

A person who, acting in good faith and with reasonable care, administers or does not administer an opioid antagonist to another person whom the person believes is suffering an opioid-related drug overdose is not subject to criminal prosecution, sanction under any professional licensing statute, or civil liability, for an act or omission resulting from the administration of or failure to administer the opioid antagonist. *Health and Safety Code 483.106*

### Low-THC Cannabis

[A district may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, production, dispensing, or possession of low-THC cannabis, as authorized by the Texas Compassionate-Use Act. Health and Safety Code 487.201](#)

**JW 7/25/19: Added per LRS suggestion and SO's feedback. This comes from the original Compassionate Use Act in 2015.**

### 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](#)

**JW 6/13/19: I don't know what to do with this ridiculous law. HB 1518, effective 9/1/2019.**

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**Note:** The following provisions apply only to a district that will adopt an unassigned epinephrine auto-injector policy [or an unassigned asthma medication policy](#).

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**Maintenance and Administration of Epinephrine Auto-Injectors**

A district may adopt and implement a policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors 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 auto-injector 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 auto-injector 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 auto-injector present during all hours the campus is open.

The supply of epinephrine auto-injectors 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 auto-injector.

*Education Code 38.208*

Definitions

*“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 Auto-Injector”*

An “unassigned epinephrine auto-injector” is an epinephrine auto-injector 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 auto-injector,

issued by a physician or person who has been delegated prescriptive authority under Occupations Code Chapter 157.

*25 TAC 37.603*

**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 auto-injector 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 auto-injector before notifying emergency medical services.

The parent, legal guardian, or emergency contact must be promptly notified by the school when an unassigned epinephrine auto-injector is utilized on their child as soon as is feasible during the emergency response to suspected anaphylaxis.

*25 TAC 37.605(e)-(f)*

**Records** School records of the administration of the unassigned epinephrine auto-injector and suspected anaphylaxis must be provided to the parent or guardian of the recipient upon request. *25 TAC 37.605(f)*

**Reports** Not later than the tenth business day after the date a school personnel member or school volunteer administers an epinephrine auto-injector in accordance with district policy, the school shall send a report to the school district; the physician who prescribed the epinephrine auto-injector; ~~the commissioner of education~~; and the commissioner of state health services.

**JW 6/14/19: SB 688, effective June 10, 2019. Applies beginning the 2019-20 school year.**

The report must include the following information:

1. The age of the person who received the administration of the epinephrine auto-injector;
2. Whether the person who received the administration of the epinephrine auto-injector was a student, a school personnel member or school volunteer, or a visitor;
3. The physical location where the epinephrine auto-injector was administered;
4. The number of doses of epinephrine auto-injector administered;
5. The title of the person who administered the epinephrine auto-injector; 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 37.608*

Personnel or  
Volunteers

At each campus in which a school adopts an unassigned epinephrine auto-injector policy, the principal may assign school personnel or school volunteers to be trained to administer unassigned epinephrine auto-injectors or seek school personnel or school volunteers who volunteer to be trained to administer unassigned epinephrine auto-injectors.

In order to increase the number of trained individuals in the administration of unassigned epinephrine auto-injectors, 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 auto-injector 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 an auto-injector.

*25 TAC 37.606(a)–(b)*

Signed Statement

Trained school personnel or school volunteers who administer the unassigned epinephrine auto-injector must submit a signed statement indicating that they agree to perform the service of administering an unassigned epinephrine auto-injector to a student or individual that may be experiencing anaphylaxis. *25 TAC 37.606(c)*

Training

A district that adopts an unassigned epinephrine auto-injector written policy is responsible for training school personnel and school volunteers in the recognizing of anaphylaxis signs and symptoms and administration of an unassigned epinephrine auto-injector.

Each assigned school personnel or school volunteer shall receive initial training and an annual refresher training. Training shall be consistent with the most recent [Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs](#)<sup>1</sup> published by the federal Centers for Disease Control and Prevention.

*25 TAC 37.607*

Training may be provided in a formal training session or through an online education course. Training must include information on

properly inspecting unassigned epinephrine auto-injectors for usage and expiration. *25 TAC 37.607(1)–(2)*

Training must include information on implementing emergency procedures, if necessary, after administering an epinephrine auto-injector, and properly disposing of used or expired epinephrine auto-injectors. A district shall maintain records on the required training. *Education Code 38.210*

The initial training must include hands-on training with an epinephrine auto-injector trainer. The annual refresher training must include a hands-on demonstration of administration skills. The training must also include information about promptly notifying local emergency medical services.

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 auto-injector on the campus.

*25 TAC 37.607(3)–(6)*

Standing Orders

A physician or person who has been delegated prescriptive authority under Occupations Code Chapter 157 may prescribe epinephrine auto-injectors in the name of a ~~school~~ district in accordance with law. *Education Code 38.211*

A ~~school~~ district shall obtain a prescription from an authorized health-care provider each year, to stock, possess, and maintain at least one unassigned adult epinephrine auto-injector 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 37.605(a)*

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 auto-injectors. Throughout the school calendar year, the designated school personnel shall coordinate with each campus to ensure that the unassigned epinephrine auto-injectors are checked monthly for expiration and usage and the findings are documented. *19 TAC 37.605(b)*

Notice to Parents

If a district implements a policy for the maintenance, administration, and disposal of epinephrine auto-injectors, the district shall provide written notice to a parent or guardian of each student enrolled in the district or school. Notice must be provided before the

policy is implemented by the district or school 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 37.609*

Storage

Unassigned epinephrine auto-injectors 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 auto-injectors on each school campus. It is recommended that the map also indicates the locations of the automated external defibrillator (AED). *25 TAC 37.605(h)*

Replacement

The ~~school~~ district shall develop a plan to replace, as soon as reasonably possible, any unassigned epinephrine auto-injector that is used or close to expiration. *25 TAC 37.605(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 auto-injectors shall be disposed of according to the school's medication disposal policy.

*25 TAC 37.605(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*

~~Immunity from Liability~~

~~A person who in good faith takes, or fails to take, any action related to the administration of epinephrine auto-injectors is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:~~

- ~~1. Issuing an order for epinephrine auto-injectors;~~
- ~~2. Supervising or delegating the administration of an epinephrine auto-injector;~~
- ~~3. Possessing, maintaining, storing, or disposing of an epinephrine auto-injector;~~
- ~~4. Prescribing an epinephrine auto-injector;~~

- ~~5.—Dispensing an epinephrine auto-injector;~~
- ~~6.—Administering, or assisting in administering, an epinephrine auto-injector;~~
- ~~7.—Providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or~~
- ~~8.—Undertaking any other act permitted or required under Education Code Chapter 38, Subchapter E.~~

~~A school district and school personnel and school volunteers are immune from suit resulting from an act, or failure to act, under Education Code Chapter 38, Subchapter E, including an act or failure to act under related policies and procedures.~~

~~An act or failure to act by school personnel or a school volunteer, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the school district or open-enrollment charter school.~~

*Education Code 38.215 JW 7/3/19: Moved the immunity to its own section and added the asthma immunity provisions of HB 2243.*

### Maintenance and Administration of Asthma Medicine

A district may adopt and implement a policy authorizing a school nurse to maintain and administer asthma medicine at each campus in the district.

The policy must provide that the school nurse may administer prescription asthma medicine to a student only if the school nurse has written notification from a parent or guardian of the student stating that the student has been diagnosed as having asthma and stating that the school nurse may administer prescription asthma medicine to the student. A school nurse may administer the prescription asthma medicine only at a school campus.

Education Code 38.208(a-1), (b-1)

### Storage

The supply of asthma medicine at each campus must be stored in a secure location and be easily accessible to the school nurse.

### No Negative Fiscal Impact

The policy may not require a ~~school~~ district to purchase prescription asthma medicine or require any other expenditure related to the maintenance or administration of asthma medicine that would result in a negative fiscal impact on the district or school.

Education Code 38.208(e)-(f)



Asthma Medicine  
Standing Order

A physician or person who has been delegated prescriptive authority under Occupations Code, Chapter 157, may prescribe asthma medicine in the name of a school district. Education Code 38.211(a)

Notice to Parents

The district shall provide written notice to a parent or guardian of each student enrolled in the district or school. Notice required under ~~this section~~ Education Code 38.212 must be provided before a policy is implemented by the district and before the start of each school year. Education Code 38.212

**JW 7/3/19: HB 2243, effective 5/24/2019. Note: The commissioner will adopt rules.**

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 auto-injectors and asthma medicine, is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:

1. Issuing an order for epinephrine auto-injectors or asthma medicine;
2. Supervising or delegating the administration of an epinephrine auto-injector or asthma medicine;
3. Possessing, maintaining, storing, or disposing of an epinephrine auto-injector or asthma medicine;
4. Prescribing an epinephrine auto-injector or asthma medicine;
5. Dispensing an epinephrine auto-injector or asthma medicine, provided that permission has been granted as provided by Education Code 38.208(b-1), ~~above~~ [see Maintenance and Administration of Asthma Medicine, above];
6. Administering, or assisting in administering, an epinephrine auto-injector, provided that permission has been granted as provided by Education Code 38.208(b-1), ~~above~~ [see Maintenance and Administration of Epinephrine Auto-Injectors, above];
7. Providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or
8. Undertaking any other act permitted or required under Education Code Chapter 38, Subchapter E.



A ~~school~~ district and school personnel and school volunteers are immune from suit resulting from an act, or failure to act, under Education Code Chapter 38, Subchapter E, including an act or failure to act under related policies and procedures.

An act or failure to act by school personnel or a school volunteer, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the school district.

Education Code 38.215

**JW 7/3/19: I removed the liability from the epinephrine section and put it here. HB 2243 adds the “or asthma medicine” to provisions in TEC 38.215.**

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<sup>1</sup> CDC Voluntary Guidelines for Managing Food Allergies:  
<https://www.cdc.gov/healthyschools/foodallergies/index.htm>

**Reports**

School authorities, including a superintendent, principal, teacher, school health official, or counselor, should report to the local health authority those students attending school who are suspected of having a notifiable condition, as defined by state law and the Texas Department of State Health Services (TDSHS). If there is no local health authority appointed for the jurisdiction where the school is located, the report shall be made to the TDSHS regional director. *25 TAC 97.2(d), .5(a); Health and Safety Code 81.041–.042*

Sexually  
Transmitted  
Diseases and HIV

In addition to the reporting requirements at Reports, above, a health professional as defined by 25 Administrative Code 97.131(5), and a local school authority shall report cases and suspected cases of STD(s) in the manner described in 25 Administrative Code 97.133. *25 TAC 97.132(a)(1)*

[See FFG(LEGAL) regarding reports to the Department of Family and Protective Services]

“School authority” means the superintendent or the superintendent’s designee. *Health and Safety Code 81.003(10)*

Penalties

A person commits a Class B misdemeanor if the person knowingly fails to report a reportable disease or health condition under Health and Safety Code Chapter 81, Subchapter B. *Health and Safety Code 81.049*

**Exclusion**

Communicable  
Condition Defined  
by Rule

A principal shall exclude from attendance any child having or suspected of having a communicable condition listed in 25 Administrative Code 97.7(a) until the readmission criteria for the condition are met. *25 TAC 97.7(a)*

Communicable  
Disease Designated  
by Commissioner

A principal shall exclude from attendance any child having or suspected of having a communicable disease designated by the commissioner of health as cause for exclusion. Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by:

1. Submitting a certificate of the attending physician, advanced practice nurse, or physician assistant attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease’s non-communicability in a school setting;
2. Submitting a permit for readmission issued by a local health authority; or
3. Meeting readmission criteria as established by the commissioner.

*25 TAC 97.7(b)–(c)*

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**Note:** The TDSHS Recommendations for the Prevention and Control of [Communicable Diseases](#)<sup>1</sup> in a Group-Care Setting, including the Communicable Disease Chart for Schools and Child-Care Centers, details symptoms and treatment information regarding several diseases, as well as exclusion and readmission criteria.

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### Bacterial Meningitis

~~TEA~~ ~~The Department of State Health Services (TDSHS)~~ shall prescribe procedures by which each district shall provide information relating to bacterial meningitis to its students and their parents each school year. The procedures must ensure that the information is reasonably likely to come to the attention of the parents of each student. The ~~agency~~ ~~department~~ shall prescribe the form and content of the information.

With the written consent of ~~TEA~~ ~~TDSHS~~, a district may provide the information to its students and their parents by a method different from the method prescribed by ~~TEA~~ ~~the department~~ if ~~the department~~ ~~TEA~~ determines that method would be effective in bringing the information to the attention of the parents of each student.

*Education Code 38.0025*

**JW 6/13/19: HB 3884, applies beginning 2019-20 school year (DSHS shall get materials out as soon as practicable), effective when signed.**

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<sup>1</sup> TDSHS Infectious Disease Control resources:  
[https://www.dshs.texas.gov/idcu/health/schools\\_childcare/resources/](https://www.dshs.texas.gov/idcu/health/schools_childcare/resources/)

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**Note:** [See FB for the application of Section 504 of the Rehabilitation Act to students who qualify for individualized health plans.](#)

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**JW 7/3/19: I moved this note up because it may apply to all of these conditions. I also shifted several DMTP-related margin 1s to margin 2s. I think the change of margins was accidentally overlooked when other care plans were added to the policy.**

**Diabetes  
Management and  
Treatment Plan**

The parent or guardian of a student who will seek care for diabetes while at school or while participating in a school activity, and the physician responsible for the student's diabetes treatment, shall develop a diabetes management and treatment plan (DMTP).

Required Elements

The DMTP must:

1. Identify the health-care services the student may receive at school;
2. Evaluate the student's ability to manage and level of understanding of the student's diabetes; and
3. Be signed by the parent or guardian and the physician.

Submission to  
School

The parent or guardian must submit the DMTP to the school, and the school must review the plan:

1. Before or at the beginning of the school year;
2. On enrollment of the student, if the student enrolls after the beginning of the school year; or
3. As soon as practicable following a diagnosis of diabetes for the student.

*Health and Safety Code 168.002*

Individualized  
Health Plan

Upon receiving the student's DMTP, the school principal, or designee, and the school nurse, if a school nurse is assigned to the school, shall develop an individualized health plan (IHP) for the student. The IHP shall be developed in collaboration with the student's parent or guardian and, to the extent practicable, the physician responsible for the student's diabetes treatment and one or more of the student's teachers.

A student's IHP must incorporate components of the student's DMTP, including the information required under Health and Safety Code 168.002(b) [see ~~REQUIRED ELEMENTS~~ [Required Elements](#), above].

*Health and Safety Code 168.001(3), .003*

Independent  
Monitoring and  
Treatment

In accordance with the student's IHP, a school shall permit the student to attend to the management and care of the student's diabetes, which may include:

1. Performing blood glucose level checks;
2. Administering insulin through the insulin delivery system the student uses;
3. Treating hypoglycemia and hyperglycemia;
4. Possessing on the student's person at any time any supplies or equipment necessary to monitor and care for the student's diabetes; and
5. Otherwise attending to the management and care of the student's diabetes in the classroom, in any area of the school or school grounds, or at any school-related activity.

*Health and Safety Code 168.008*

Required Care

Each school shall adopt a procedure to ensure that a school nurse or at least one unlicensed diabetes care assistant (UDCA) is present and available to provide the required care to a student with diabetes during the regular school day. A district may not restrict the assignment of a student with diabetes to a particular campus on the basis that the campus does not have the required UDCA's.

*Health and Safety Code 168.007(c)–(d)*

If a school nurse is assigned to a campus and the nurse is available, the nurse shall perform the tasks necessary to assist a student with diabetes in accordance with the student's IHP.

School Nurse Not  
Available

If a school nurse is not assigned to the campus or a school nurse is not available, a UDCA shall perform the tasks necessary to assist the student in accordance with the student's IHP and in compliance with any guidelines provided during UDCA training. A UDCA may perform these tasks only if the parent or guardian of the student signs an agreement that:

1. Authorizes a UDCA to assist the student; and
2. States that the parent or guardian understands that a UDCA is not liable for civil damages [see ~~IMMUNITY FROM LIABILITY~~ [Immunity from Liability](#), below].

*Health and Safety Code 168.007(a)*

If a school nurse is not assigned to a campus:

1. A UDCA must have access to an individual with expertise in the care of persons with diabetes, such as a physician, a registered nurse, a certified diabetes educator, or a licensed dietitian; or
2. The principal must have access to the physician responsible for the student's diabetes treatment.

*Health and Safety Code 168.007(b)*

Unlicensed  
Diabetes Care  
Assistants

At each school in which a student with diabetes is enrolled, the principal, or designee, shall:

1. Seek school employees who are not health-care professionals to serve as UDCA's and to care for students with diabetes; and
2. Make efforts to ensure the school has:
  - a. At least one UDCA if a full-time nurse is assigned to the school; and
  - b. At least three UDCA's if a full-time nurse is not assigned to the school.

"School employee" means a person employed by a school, a local health department that assists the school under Health and Safety Code Chapter 168 (Care of Students with Diabetes), or another entity with whom the school has contracted to perform its duties under that chapter.

"Unlicensed diabetes care assistant" means a school employee who has successfully completed the required training [see UDCA ~~TRAINING~~[Training](#), below].

A school employee may not be subject to any penalty or disciplinary action for refusing to serve as a UDCA.

A UDCA shall serve under the supervision of the principal.

*Health and Safety Code 168.001(5)–(6), .003–.004*

UDCA Training

If a school nurse is assigned to a campus, the nurse shall coordinate the training of school employees acting as UDCA's. Training for UDCA's must be provided by a health-care professional with expertise in the care of persons with diabetes or by a school nurse. The training must include instruction in the elements set forth at Health and Safety Code 168.005(d).

Training must be provided before the beginning of the school year or as soon as practicable following:

1. The enrollment of a student with diabetes at a campus that previously had no students with diabetes; or
2. A diagnosis of diabetes for a student at a campus that previously had no students with diabetes.

The school nurse or principal shall maintain a copy of the training guidelines and any records associated with the training.

*Health and Safety Code 168.005*

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**Note:** ~~[Guidelines for Training School Employees who are not Licensed Healthcare Professionals \(PDF\)](#)<sup>1</sup> to care for students with diabetes is available on the Texas Department of State Health Services website.~~ [Guidance for the care of students with diabetes is available on the Texas Department of State Health Services \(TDSHS\) website.](#)<sup>2</sup>

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Information to  
Employees

A district shall provide to each district employee who is responsible for providing transportation for a student with diabetes or supervising a student with diabetes during an off-campus activity a one-page information sheet that:

1. Identifies the student who has diabetes;
2. Identifies potential emergencies that may occur as a result of the student's diabetes and the appropriate responses to such emergencies; and
3. Provide the telephone number of a contact person in case of an emergency involving the student with diabetes.

*Health and Safety Code 168.006*

Immunity from  
Liability

A school employee may not be subject to any disciplinary proceeding, as defined by Education Code 22.0512(b), resulting from any action taken in compliance with Health and Safety Code Chapter 168. The requirements of Chapter 168 are considered to involve the employee's judgment and discretion and are not considered ministerial acts for purposes of immunity under Education Code 22.0511. *Health and Safety Code 168.009(a)* [See DG]

A school nurse is not responsible for and may not be subject to disciplinary action under Occupations Code Chapter 301 for actions performed by a UDCA. *Health and Safety Code 168.009(b)*

A UDCA who assists a student as provided above [see **REQUIRED CARE** [Required Care](#), above] in compliance with the student's IHP:

1. Is not considered to be engaging in the practice of professional or vocational nursing under Occupations Code Chapter 301 or other state law; and
2. Is exempt from any applicable state law or rule that restricts the activities that may be performed by a person who is not a health-care provider.

A UDCA may exercise reasonable judgment in deciding whether to contact a health-care provider in the event of a medical emergency involving a student with diabetes.

*Health and Safety Code 168.007(e)–(f)*

### Students at Risk for Anaphylaxis

The board shall adopt and administer a policy for the care of students with a diagnosed food allergy at risk for anaphylaxis based on ~~“Guidelines for the Care of Students with Food Allergies At-Risk for Anaphylaxis”~~<sup>3</sup>~~guidelines~~ developed by the commissioner of state health services. A district ~~that implements a policy for the care of students with a diagnosed food allergy at risk for anaphylaxis before the development of the commissioner’s guidelines~~ shall annually review the policy and, as necessary, revise ~~its~~the policy for the care of students with a diagnosed food allergy at risk for anaphylaxis to~~as necessary to~~ ensure the policy is consistent with the most current version of the guidelines.

JW 6/13/19; SB 869, 6/10/2019. We may want to link to the guidelines since we linked to the diabetes document in a footnote.

I deleted the law regarding the commissioner’s guidelines. SB 869 creates additional, but similar guidelines to the deleted material but puts the material in Subsection (h). The commissioner’s guidelines may not:

- ~~1.—Require a district to purchase prescription anaphylaxis medication, such as epinephrine, or require any other expenditure that would result in a negative fiscal impact on the district; or~~
- ~~2.—Require the personnel of a district to administer anaphylaxis medication, such as epinephrine, to a student unless the anaphylaxis medication is prescribed for that student.~~

This section does not waive any liability or immunity of the district or its officers or employees, or create any liability for or a cause of action against the district or its officers or employees.

Notwithstanding any other law, these provisions do not create a civil, criminal, or administrative cause of action or liability or create



a standard of care, obligation, or duty that provides the basis for a cause of action.

**JW 6/13/19: Similarly, the guidelines in (i) and (j) seem redundant to the guidelines in (d). I did add (j)**

*Education Code 38.0151(a)–(b), (d), (i)–(j)*

A district that provides for the maintenance, administration, and disposal of epinephrine auto-injectors under Education Code Chapter 38, Subchapter E [see FFAF] is not required to comply with Education Code 38.0151. *Education Code 38.0151(f)*

Website  
Requirements

Each school year, the board shall post a summary of the guidelines on the district's website [see CQA], including instructions on obtaining access to the complete guidelines document. The district's website must be accessible by each student enrolled in the district and a parent or guardian of each student. Any forms used by a district requesting information from a parent or guardian enrolling a child with a food allergy in the district must include information to access on the district's website a summary of the guidelines and instructions on obtaining access to the complete guidelines document. *Education Code 38.0151(b)*

**JW 7/3/19: SB 869, see above.**

**Moved the 504 note to the top of the policy. 504 plans might apply to any of these conditions.**

Seizure Management  
and Treatment Plan

The parent or guardian of a student with a seizure disorder may seek care for the student's seizures while the student is at school or participating in a school activity by submitting to the district at which the student is enrolled a copy of a seizure management and treatment plan developed by the student's parent or guardian and the physician responsible for the student's seizure treatment. The plan must be submitted to and reviewed by the district:

1. Before or at the beginning of the school year;
2. On enrollment of the student, if the student enrolls in the district after the beginning of the school year; or
3. As soon as practicable following a diagnosis of a seizure disorder for the student.

Plan Requirements

A seizure management and treatment plan must:

1. Identify the health-care services the student may receive at school or while participating in a school activity;
2. Evaluate the student's ability to manage and level of understanding of the student's seizures; and
3. Be signed by the student's parent or guardian and the physician responsible for the student's seizure treatment.

Education Code 38.032(a)-(b)

Immunity

The care of a student with a seizure disorder by a district employee under a seizure management plan submitted under ~~this section~~ Education Code 38.032 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, regarding immunity from liability.

The immunity from liability provided by Education Code 22.0511 applies to an action or failure to act by a district employee in administering a medication, assisting with self-administration, or otherwise providing for the care of a student under a seizure management plan submitted for the student.

Education Code 38.032(c)-(d)

[See DMA for seizure recognition and related first aid training.]

**JW 7/3/19: HB 684, effective 6/14/2019. MT says he addressed the required training for nurses in DMA.**

**~~Note: See FB for the application of Section 504 of the Rehabilitation Act to students who qualify for individualized health plans.~~**

~~<sup>1</sup> Guidelines for Training School Employees who are not Licensed Healthcare Professionals (PDF): <http://www.dshs.texas.gov/diabetes/PDF/HB984.pdf>~~

<sup>2</sup> TDSHS guidance for the care of students with diabetes: <https://www.dshs.texas.gov/schoolhealth/tgshs/hlth-conds/?terms=school%20diabetes>

<sup>3</sup> TDSHS Guidelines for the Care of Students with Food Allergies At-Risk for Anaphylaxis: [https://www.dshs.texas.gov/uploadedFiles/Content/Prevention\\_and\\_Preparedness/schoolhealth/SHAC/Guidelines-Food%20Allergy-Final.pdf](https://www.dshs.texas.gov/uploadedFiles/Content/Prevention_and_Preparedness/schoolhealth/SHAC/Guidelines-Food%20Allergy-Final.pdf)

## 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 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 ~~this section~~ Education Code 37.115 must:

1. Be consistent with the model policies and procedures developed by the Texas School Safety Center (TxSSC) [~~S~~see Education Code 37.220];

**JW 7/23/19: CVC requested a reference here to support the Local.**

2. Require each team to complete training provided by the ~~Texas School Safety Center~~ TxSSC or a regional education service center (ESC) regarding evidence-based threat assessment programs; and
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] ~~to TEA.~~

### Membership

The superintendent shall ensure 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.

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.

**JW 7/23/19: Last sentence in (d) and subsection (e) accidentally omitted in the first draft.**

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].

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(d)–(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. If the individual is a student, the superintendent shall 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)–(i)

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 ~~juvenile justice alternative education program~~ JJAEP or ~~disciplinary alternative education program~~ 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. ~~BA~~ best-practices program or research-based practice under Health and Safety Code 161.325, 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 ~~[See Policies and Procedures, above];~~ or
  - d. Any other program relating to safety identified by the commissioner.

Education Code 37.115(k)

JW 6/30/19: SB 11, effective 6/6/2019. TEA will be adopt rules as specified in the statute. I did not add Section 17 of SB 11, TEC 37.220, the Texas Safety Center's requirement to implement model policies and procedures. But in the update notes and for our own knowledge, we should be aware that those are forthcoming.

**Recommended Programs**

The Texas Department of State Health Services (TDSHS), in coordination with TEA 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 ~~school~~ 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 intervention;
2. Mental health promotion;
3. Building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;
4. Substance abuse prevention and intervention;
5. Suicide prevention;
6. Grief-informed and trauma-informed practices;
7. Positive behavior interventions and supports and positive youth development; and
8. Safe, supportive, and positive school climate.

“School climate” means the quality and character of school life, including interpersonal relationships, teaching and learning practices, and organizational structures, as experienced by students enrolled in the district, parents of those students, and personnel employed by the district.

TDSHS, TEA, and each ESC shall make the list easily accessible on their websites.

**Practices and Procedures**

A district may 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;](#)

**JW 6/30/19: SB 11, effective 6-6-2019,**

- ~~1.~~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;

- ~~2-3.~~ 3. Include a procedure for providing notice of a student identified as at risk of committing suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs;
- ~~3-4.~~ 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; and
- ~~4-5.~~ 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.

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 ~~school~~ districts the authority to prescribe medications. Any and all medical decisions are to be made by a parent or guardian of a student.

*Health and Safety Code 161.325*

## Immunity

These 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. *Health and Safety Code 161.326*



### Trauma-Informed Care Policy

A district shall adopt and implement a policy requiring the integration of trauma-informed practices in each school environment. A district must include the policy in the district improvement plan required under Education Code 11.252 [see BQ].

A policy required by ~~this section~~ Education Code 38.036 must address:

1. Using resources developed by the Texas Education Agency (TEA), methods for:
  - a. Increasing staff and parent awareness of trauma-informed care; and
  - b. Implementation of trauma-informed practices and care by district and campus staff; and
2. Available counseling options for students affected by trauma or grief.

#### Education Code 38.036(a)–(b)

### Training

The methods ~~under~~ for increasing awareness and implementation of trauma-informed care must include training as provided below. The training must be provided:

1. Through a program selected from the list of recommended best practice-based programs and research-based practices established under Health and Safety Code 161.325;
2. As part of any new employee orientation for all new district educators; and
3. To existing district educators on a schedule adopted by TEA that requires educators to be trained at intervals necessary to keep educators informed of developments in the field.

For any training under this provision, a district shall maintain records that include the name of each district staff member who participated in the training.

If a district determines that the district does not have sufficient resources to provide the training required under this provision, the district may partner with a community mental health organization to provide training that meets the requirements at no cost to the district.

#### Education Code 38.036(c)–(d), (f)

### Reporting to TEA

A district shall report annually to TEA the following information for the district as a whole and for each school campus:

1. The number of teachers, principals, and counselors employed by the district who have completed training under this provision; and
2. The total number of teachers, principals, and counselors employed by the district.

Education Code 38.036(e)

JW 6/30/19: SB 11, effective 6-6-2019.

**Liaison for Court-Related Students**

A district shall appoint at least one educator, as defined by Education Code 5.001(5), to act as a liaison officer for court-related students. The liaison officer shall provide counseling and other services for court-related students and their parents to establish or reestablish normal attendance and progress in school. *Education Code 37.014*

**Liaison for Homeless Students Who Are Homeless**

As a condition of receiving funds under the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), a district shall designate an appropriate staff person, able to carry out the required duties, as the district liaison for homeless children. A district will adopt policies and practices to ensure participation by the liaison in professional development and other technical assistance activities provided and approved by the statewide coordinator for education of homeless children and youths. *42 U.S.C. 11432(g)(1)(J)*

Notice

A district shall inform school personnel, service providers, and advocates working with homeless families, parents and guardians of homeless children, and homeless children of the duties of the liaison. [See FD for definition of “homeless children.”]

Duties

The liaison shall ensure that:

1. Homeless children are identified by school personnel and through outreach and coordination activities with other entities and agencies;
2. Homeless children are enrolled in, and have a full and equal opportunity to succeed in, district schools;
3. Homeless families and homeless children have access to and receive educational services for which they are eligible, including services through Head Start programs (including Early Head Start programs) under the Head Start Act, early intervention services under Part C of the Individuals with Disabilities Education Act, and other district preschool programs;
4. Homeless families and homeless children receive referrals to health care, dental, mental health and substance abuse, housing, and other appropriate services;
5. The parents or guardians of homeless children are informed of the available educational and related opportunities and are provided meaningful opportunities to participate in the education of their children;
6. Public notice of the educational rights of homeless children is disseminated in locations frequented by parents or guardians of such children, and unaccompanied youths, including schools, shelters, public libraries, and soup kitchens, in a

manner and form understandable to the parents and guardians of homeless children, and unaccompanied youths;

- 7. Enrollment disputes are mediated;
- 8. The parent or guardian of a homeless child, and any unaccompanied youth, are fully informed of all transportation services, including transportation to the school of origin, and are assisted in accessing transportation to the school of enrollment;
- 9. School personnel providing services under the McKinney-Vento Act receive professional development and other support; and
- 10. Unaccompanied youths:
  - a. Are enrolled in school;
  - b. Have opportunities to meet the same challenging state academic standards as the state establishes for other children; and
  - c. Are informed of their status as independent students under section 480 of the Higher Education Act of 1965 and that the youths may obtain assistance from the liaison to receive verification of such status for purposes of the Free Application for Federal Student Aid.

*42 U.S.C. 11432(g)(6)(A), (B)*

Determination of Homeless Status

A liaison who receives training under 42 U.S.C. 11432(f)(6) may affirm, without further action by the Department of Housing and Urban Development, that a child who is eligible for and participating in a district program, or the immediate family of such a child, who meets the eligibility requirements of the McKinney-Vento Act for an authorized program or service under Title IV of the Act, is eligible for such program or service. *42 U.S.C. 11432(g)(6)(D)*

**Liaison for Children in State Conservatorship**

Each district shall appoint at least one employee to act as a liaison officer to facilitate the enrollment in or transfer to a public school of a child in the district who is in the conservatorship of the state and submit the liaison’s name and contact information to TEA in a format and under the schedule determined by the commissioner of education.

TEA shall provide information to the liaisons on practices for facilitating the enrollment in or transfer to a public school of children who are in the conservatorship of the state.

*Education Code 33.904*

**Transition to Higher Education**

A district, in coordination with the Department of Family and Protective Services (DFPS), shall facilitate the transition of each child enrolled in the district who is eligible for a tuition and fee waiver under Education Code 54.366, and who is likely to be in the conservatorship of DFPS on the day preceding the child’s 18th birthday to an institution of higher education by:

1. Assisting the child with the completion of any applications for admission or financial aid;
2. Arranging and accompanying the child on campus visits;
3. Assisting the child in researching and applying for private or institution-sponsored scholarships;
4. Identifying whether the child is a candidate for appointment to a military academy;
5. Assisting the child in registering and preparing for college entrance examinations, including, subject to the availability of funds, arranging for the payment of any examination fees by DFPS; and
6. Coordinating contact between the child and a liaison designated by the Higher Education Coordinating Board for students who were formerly in the conservatorship of DFPS.

*Family Code 264.121~~1~~2* [See FFEA]

**JW 7/7/19: HB 4170, effective 9/1/2019. Redesignates this provision from HB 928 in 2017.**

**Child Welfare Contact**

A district receiving Title 1, Part A funds must collaborate with the state or local child welfare agency to designate a point of contact if the child welfare agency notifies the district, in writing, that the agency has designated an employee to serve as a point of contact for the district. *20 U.S.C. 6312(c)(5)(A)*

**School-Community Guidance Center**

A district may establish a school-community guidance center designed to locate and assist children with problems that interfere with their education, including juvenile offenders and children with severe behavioral problems or character disorders.

Each center shall coordinate efforts of district personnel, local police departments, school attendance officers, and probation officers in working with students, dropouts, and parents in identifying and correcting factors that adversely affect the education of the children.

*Education Code 37.051*

Upon request from a superintendent, a governmental agency concerned with children that has jurisdiction in a district shall cooperate with the school-community guidance center and shall designate a liaison to work with the center in identifying and correcting problems affecting school-age children in the district. The governmental agency may establish or finance a school-community guidance center jointly with a district according to terms approved by the governing body of each participating entity. *Education Code 37.053*

Cooperative Programs

A board may develop cooperative programs with state youth agencies for children found to have engaged in delinquent conduct. *Education Code 37.052*

Parental Notice and Access to Information

Before a student is admitted to a school-community guidance center, the administrator of the center shall notify the student's parent or guardian that the student has been assigned to attend the center.

The notice must include:

1. The reason the student has been assigned to the center;
2. A statement that on request the parent or guardian is entitled to be fully informed in writing of any treatment method or testing program involving the student; and
3. A statement that the parent or guardian may request to be advised and to give written, signed consent for any psychological testing or treatment involving the student.

If after notification, the parent refuses to consent to testing or treatment of the student, the center may not provide any further psychological treatment or testing.

A parent or guardian of a student attending a center is entitled to inspect:

1. Any instructional or guidance material to be used by the student, including teachers' manuals, tapes, and films; and
2. The results of any treatment, testing, or guidance method involving the student.

The administrator of the center may set a schedule for inspection of materials that allows reasonable access but does not interfere with the conduct of classes or business activities of the school.

*Education Code 37.054*

**Parental Involvement**

On admitting a student to a school-community guidance center, a representative of a district, the student, and the student's parent or

legal guardian shall develop an agreement that specifies the responsibilities of the parent and the student. The agreement must include:

1. A statement of the student's behavioral and learning objectives;
2. A requirement that the parent attend specified meetings and conferences for teacher review of the student's progress; and
3. The parent's acknowledgement that the parent understands and accepts the responsibilities imposed by the agreement regarding attendance at meetings and conferences and assistance in meeting objectives, defined by the district, to aid student remediation.

A superintendent may obtain a court order from a district court in the district requiring a parent to comply with such an agreement. A parent who violates such a court order may be punished for contempt of court.

Court Supervision

If a district, the student, and the parent or guardian for any reason fail to reach an agreement, any party may request the juvenile court or its designee to conduct a hearing and enter an order establishing the responsibilities and duties of each of the parties as the court deems appropriate.

*Education Code 37.055--.056*

**Consent to Examinations, Tests, or Treatment**

A district employee must obtain the written consent of a child's parent before the employee may conduct a psychological 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) [See FNG]*

**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)*

**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)*

**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 TSBEP rules, is necessary in this context.](#)

[22 TAC 465.38\(g\)](#)

[JW 2/9/19: I'm not sure if this is the right place for this. As discussed in MT's email and his draft policy on LSSPs, we have a material gap in our PRM. This provision may need to be moved or add a cross reference.](#)

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.]

[\[See FFB for mental health-care services provided by the threat assessment and safe and supportive school team.\]](#)

[JW 7/3/19: SB 11, effective 6/14/2019. This same provision is repeated in FFB. Is that too duplicative? I see a purpose for leaving it in both locations.](#)

Side note: Is the restriction on each individual team member? And if so, does that conflict with other provisions in FFE?

JW 7/25/19: Deleted duplicative threat assessment team mental health assessment information and added a cross reference instead.

**Antivictimization  
Policies and  
Programs**

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\(a\)](#)

**JW 6/14/19: HB 111, effective 5/31/2019. I think we should have a reference in here to the policy even if we keep the details at BQ. We treat the employee training similarly (see below).**

**Duty to Report**

By Any Person

Any person who has 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)*

*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*

By a Professional

Any professional who has 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 48 hours after the professional first suspects abuse or neglect.

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, and juvenile detention or correctional officers.

*Family Code 261.101(b)*

Adult Victims of  
Abuse

A person or professional shall make a report in the manner required above if the person or professional has 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)*

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 FFAC]

**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 person 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; and
3. Any other pertinent information concerning the alleged or suspected abuse or neglect.

*Family Code 261.102, .104*

**To Whom Reported**

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 under item 3, below, or the report involves a juvenile justice program or facility [see JJAEPS, below].

All other reports shall be made to:

1. Any local or state 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 61.1051(a)(1)*

JJAEPs

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* [See DG]

**[JW 7/3/19: HB 621, effective 9/1/2019. Please check to make sure DG was updated with the details.](#)**

**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 of-  
fense. *Penal Code 39.06*

**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)(1)*

Unless waived in writing by the person making the report, the iden-  
tity of an individual making a report under this chapter is confiden-  
tial 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)*

**SBEC Disciplinary  
Action**

The State Board for Educator Certification (SBEC) may take any of  
the actions listed in 19 Administrative Code 249.15(a) (regarding  
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 pursu-  
ant to Family Code 261.001, or has failed to notify the SBEC or the  
school superintendent or director under the circumstances and in  
the manner required by Education Code 21.006 and 19 Administra-  
tive Code 249.14(d)–(f). *19 TAC 249.15(b)(4)*

**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 em-  
ployee 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 re-  
cording, 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 Texas 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.

The policies must require every school employee, agent, or contractor who suspects child 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 48 hours or less, as determined by the board, after learning of facts giving rise to the suspicion.

The policies must be consistent with the Family Code, Chapter 261, and 40 Administrative Code Chapter 700 (relating to CPS) regarding investigations by DFPS, including regulations governing investigation of abuse by school personnel and volunteers. [See GRA]

The policies 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. Prohibitions against interference with an investigation of a report of child abuse or neglect, including:
  - a. The prohibition, under Family Code 261.302 and 261.303, against denying an investigator's request to interview a student at school; and
  - b. The prohibition, under Family Code 261.302, against 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. Confidentiality provisions relating to a report of suspected child abuse or neglect;
5. Any disciplinary action that may result from noncompliance with a district's reporting policy;
6. The prohibition under Education Code 26.0091 [see Psychotropic Drugs and Psychological Testing, above]; and
7. The current toll-free number for DFPS.

The policies must 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.

*19 TAC 61.1051(a)*

Annual Distribution  
and Staff  
Development

The policies shall be distributed to all personnel at the beginning of each school year and shall be addressed in staff development programs at regular intervals determined by a board. *19 TAC 61.1051(b)*

Each school year, a district shall provide training as required by Education Code 38.0041 to all new district employees as a part of new employee orientation. [See DH and DMA] *Education Code 38.0041; 19 TAC 61.1051(c)*

**Required Poster**

A district shall place a poster of the following specifications at every campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The poster must:

1. Be in a format and language that is clear, simple, and understandable to students;
2. Be in English and in Spanish;
3. Be 11 inches x 17 inches or larger;
4. Be in large print;
5. Be placed at eye-level to the student for easy viewing; and
6. Include the following information:
  - a. The current toll-free DFPS Abuse Hotline telephone number (in bold print);
  - b. Instructions to call 911 for emergencies; and
  - c. Directions for accessing the DFPS [Texas Abuse Hotline website](http://www.txabusehotline.org)<sup>1</sup> for more information on reporting abuse, neglect, and exploitation.

*Education Code 38.0042; 19 TAC 61.1051(e), (f)*

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<sup>1</sup> Texas Abuse Hotline website: <http://www.txabusehotline.org>



**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*

## Safety Training

~~A district~~ [The UIL](#) shall provide training to students participating in ~~athletic-an~~ extracurricular [athletic](#) activities related to:

1. Recognizing the 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
2. The risks of using dietary supplements designed to enhance or marketed as enhancing athletic performance.

The training ~~may~~ [must](#) be conducted by the ~~district~~ [UIL or by another organization as determined by the UIL](#), including the American Red Cross, the American Heart Association, or a similar organization, ~~or by the UIL~~.

*Education Code 33.202(d)–(e)*

**[JW 5/24/19: SB 1376, effective June 4, 2019, applies beginning in the 2019-20 school year](#)**

<i>Records</i>	<p>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.</p> <p>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.</p> <p><i>Education Code 33.206</i></p>
Unsafe Practices	<p>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. <i>Education Code 33.204</i></p>
Safety Precautions	<p>A coach, trainer, or sponsor for an extracurricular athletic activity shall at each athletic practice or competition ensure that:</p> <ol style="list-style-type: none"> <li>1. Each student participant is adequately hydrated;</li> <li>2. Any prescribed asthma medication for a student participant is readily available to the student;</li> <li>3. Emergency lanes providing access to the practice or competition area are open and clear; and</li> <li>4. Heatstroke prevention materials are readily available.</li> </ol> <p>If a student participating in a practice or competition becomes unconscious during the activity, the student may not:</p> <ol style="list-style-type: none"> <li>1. Return to the activity during which the student became unconscious; or</li> <li>2. Participate in any extracurricular athletic activity until the student receives written authorization for such participation from a physician.</li> </ol> <p><i>Education Code 33.205</i></p>
Concussions	<p>"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. <i>Education Code 38.152</i></p> <p>"Concussion" means a complex pathophysiological process affecting the brain caused by a traumatic physical force or impact to the</p>

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 concussion oversight team if requested by the school nurse.

**JW 6/13/19: HB 961, effective June 2, 2019.**

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, .158*

**JW 6/13/19: This language for the training is broad and borders on editorial, but I think it's okay. HB 961 added school nurse who serves as a member to the list but the editorial language of this statute covers the nurse. This section could use a rewrite eventually to better align with statutory language.**

*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; [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*

**JW 6/13/19: HB 961, effective June 2, 2019.**

*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 ~~school district~~ 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*

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 school 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 established 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*

**JW 6/13/19; HB 76, effective 9/1/2019, applies beginning the 2019-20 school year.**

UIL is required to adopt rules.

JW 7/3/19: HB 2299, effective 9/1/2019.

JW 7/25/19: Deleted the material from HB 2299, regarding sports team physicians from out of state.

CVC 7/24/19: I lean toward not including the Sports Team Physicians material. This seems to be information for the physician. If a district inquires about whether an out of state physician is licensed, the physician could let the district know they are exempt under this provision. I'm not sure why the district needs to know this

## 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]

**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)*

The following are honors classes for purposes of eligibility to participate in extracurricular activities:



1. All College Board Advanced Placement courses and International Baccalaureate courses in all disciplines;
2. English language arts: high school/college concurrent enrollment classes that are included in the “Community College General Academic Course Guide Manual (Part One)”;
3. Languages other than English: high school/college concurrent enrollment classes that are included in the “Community College General Academic Course Guide Manual (Part One)” and languages other than English courses Levels IV–VII;
4. Mathematics: high school/college concurrent enrollment classes that are included in the “Community College General Academic Course Guide Manual (Part One)” and precalculus;
5. Science: high school/college concurrent enrollment classes that are included in the “Community College General Academic Course Guide Manual (Part One)”;
6. Social Studies: Social Studies Advanced Studies, Economics Advanced Studies, high school/college concurrent enrollment classes that are included in the “Community College General Academic Course Guide Manual (Part One).”

Districts may identify additional honors courses in the subject areas of English language arts, mathematics, science, social studies, economics, 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).

	<i>Education Code 33.081(e)</i>
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. <i>Education Code 33.081(f)</i>
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. <i>Education Code 33.081(d)</i>
<b>Attendance and Participation</b>	The State Board of Education 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 ten times during the school year, and the policy prevails over any conflicting policy adopted by the State Board of Education.  <i>Education Code 33.081(a), .0811</i>
State Board of Education 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 a board, student participation in the organization's activities shall be subject to all provisions of statute and to Texas Administration Code Title 19, section 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. <i>19 TAC 76.1001(f)</i> [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, ~~(except as described below)~~, 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~~

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. ~~Only item 4, above, applies; and~~ 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

~~2.~~ 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)

**JW 6/27/19: Some statutory tightening. Added 19 TAC 76.1001(a)(3) as amended to be effective May 1, 2019 44 TexReg 2157**

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 school 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 non-traditional), 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)*

**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 (regarding child abuse investigations). *Education Code 26.008(a)*

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. <i>Byard v. Clear Creek Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 020-R5-1001 (June 17, 2002)</i>
Videotaping and Recording	A district employee is not required to obtain the consent of a child's parent before the employee 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. <i>Education Code 26.009(b)(2)</i>
<b>Discriminatory Club</b>	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.  <i>Education Code 33.082</i>
<b>Special Olympics Recognition</b>	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. <i>Education Code 33.093</i>
<b>Student Election Clerks</b>	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. <i>Education Code 33.092</i>

**Membership and Solicitation**

Misdemeanor  
Offense

A person commits a Class C misdemeanor if the person:

1. Is a member of, pledges to become a member of, joins, or solicits another person to join or pledge to become a member of a public school fraternity, sorority, secret society, or gang; or
2. Is not enrolled in a public school and solicits another person to attend a meeting of a public school fraternity, sorority, secret society, or gang or a meeting at which membership in one of those groups is encouraged.

*Education Code 37.121(a), (c)*

[Public School Fraternity, Sorority, Secret Society, or Gang](#)

[A “public school fraternity, sorority, secret society, or gang” means an organization composed wholly or in part of students of public primary or secondary schools that seeks to perpetuate itself by taking in additional members from the students enrolled in school on the basis of the decision of its membership rather than on the free choice of a student in the school who is qualified by the rules of the school to fill the special aims of the organization. The term does not include an agency for public welfare, including Boy Scouts, Hi-Y, Girl Reserves, DeMolay, Rainbow Girls, Pan-American Clubs, scholarship societies, or other similar educational organizations sponsored by state or national education authorities. Education Code 37.121\(d\)](#)

[JW 7/6/19: SB 38, effective 9/1/2019,](#)

[The hazing provisions in the TEC are strange, because two different subchapters \(E, penal provisions, and F, hazing\) address hazing differently. Subchapter E seems only to apply to public primary and secondary, but Subchapter F, while mostly aimed at higher ed, specifically includes a public or private high school. The definitions and the classes of misdemeanor are also different. I’m not sure the last person to update the “Definitions” section at the former margin 1, below, understood this.](#)

[Also, since Subchapter F, at Personal Hazing Offense, only loops in high school. Do we need versions for this? We currently do not have different versions.](#)

*DAEP Placement*

A board or an educator shall recommend placing in a disciplinary alternative education program any student who commits the offenses described above. *Education Code 37.121(b)*

Felony Offense

A person commits a felony if the person, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, threatens the child or a member of the child's

family with imminent bodily injury or causes the child or a member of the child's family bodily injury. -*Penal Code 71.022*

**Personal Hazing  
Offense**

A person commits an offense if the person:

1. Engages in hazing.
2. Solicits, encourages, directs, aids, or attempts to aid another in engaging in hazing.
3. Has firsthand knowledge of the planning of a specific hazing incident involving a student in an educational institution, or firsthand knowledge that a specific hazing incident has occurred, and knowingly fails to report that knowledge in writing to a principal, superintendent, or designee.

*Education Code 37.152(a)*

**Definitions**

~~Public School  
Fraternity, Sorority,  
Secret Society, or  
Gang~~

~~A "public school fraternity, sorority, secret society, or gang" means an organization composed wholly or in part of students of public primary or secondary schools that seeks to perpetuate itself by taking in additional members from the students enrolled in school on the basis of the decision of its membership rather than on the free choice of a student in the school who is qualified by the rules of the school to fill the special aims of the organization. The term does not include an agency for public welfare, including Boy Scouts, Hi-Y, Girl Reserves, DeMolay, Rainbow Girls, Pan-American Clubs, scholarship societies, or other similar educational organizations sponsored by state or national education authorities. *Education Code 37.121(d)*~~

JW 7/10/19: This is a subchapter E definition so I moved it to the Subchapter E section.

**Hazing**

"Hazing" means any intentional, knowing, or reckless act occurring on or off the campus of an educational institution ~~directed against a student~~, by one person alone or acting with others, directed against a student that endangers the mental or physical health or the safety of a student for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization ~~whose members are or include other students. The term includes~~ if the act:

1. Is any type of physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity;
2. Involves sleep deprivation, exposure to the elements, confinement in a small space, calisthenics, or other similar activity that subjects the student to an unreasonable risk of harm or

that adversely affects the mental or physical health or safety of the student;

3. Involves consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance, other than as described by ~~Number~~ item 5, below, that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of the student;
4. Is any activity that induces, causes, or requires the student to perform a duty or task that involves a violation of the Penal Code; or
5. Involves coercing, as defined by Penal Code 1.07, the student to consume:
  - a. A drug; or
  - b. An alcoholic beverage or liquor in an amount that would lead a reasonable person to believe that the student is intoxicated, as defined by Penal Code 49.01.

Education Code 37.151(6)

- ~~1. Any type of physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity.~~
- ~~2. Any type of physical activity, such as sleep deprivation, exposure to the elements, confinement in a small space, calisthenics, or other activity that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of the student.~~
- ~~3. Any activity involving consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of the student.~~
- ~~4. Any activity that intimidates or threatens the student with ostracism, that subjects the student to extreme mental stress, shame, or humiliation, or that adversely affects the mental health or dignity of the student or discourages the student from entering or remaining registered in an educational institution, or that may reasonably be expected to cause a student to leave the organization or the institution rather than submit to acts described above.~~
5. Any activity that induces, causes, or requires the student to perform a duty or task that involves a violation of the Penal



~~Code JW 7/10/19: SB 38, effective 9/1/2019. SB 38 amended the definition of organizations, hazing.~~

Educational  
Institution

“Educational institution” for purposes of this policy includes a public high school.

Student

“Student” means any person who:

1. Is registered in or in attendance at an educational institution;
2. Has been accepted for admission at the educational institution where the hazing incident occurs; or
3. Intends to attend an educational institution during any of its regular sessions after a period of scheduled vacation.

~~Education Code 37.151~~

Organization

“Organization” means a fraternity, sorority, association, corporation, order, society, corps, club, or student government, a band or musical group or an academic, athletic, cheerleading, or dance team, including any group or team that participates in National Collegiate Athletic Association competition, or a service, social, or similar group, whose members are primarily students.

Education Code 37.151

**Information  
Regarding Gang-  
Free Zones**

A superintendent shall ensure that the student handbook for each campus includes information on gang-free zones and the consequences of engaging in organized criminal activity within those zones. *Education Code 37.110*

**Definition** A “paging device” is a telecommunications device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor. The term does not include an amateur radio under the control of an operator who holds an amateur radio station license issued by the Federal Communications Commission.

**Paging Devices Policy** A board may adopt a policy prohibiting students from possessing paging devices while on school property or while attending school-sponsored or school-related activities on or off school property.

**Penalties** The policy may establish disciplinary measures to be imposed for violation of the prohibition and may provide for confiscation of the paging device.

**Disposal** A district policy may provide for:

1. Disposal of a confiscated paging device in any reasonable manner, provided the student’s parent and the paging company whose name and address appear on the device are given 30 days’ notice of the intent to dispose of the device. Such notice may be made by telephone, telegraph, or in writing, and must include the serial number of the device.
2. Charging the owner of the device or the student’s parent an administrative fee of not more than \$15 before it releases the device.

*Education Code 37.082*

**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 ~~this section~~ Education Code 25.904 conflicts with Education Code 37.082 ~~(above)~~ [see Paging Devices Policy, above], ~~this section~~ Education Code 25.904 prevails.

Education Code 25.904

**JW 6/13/19: HB 3906, 6/1/2019. Applies this school year (unlike some other sections of HB 3906).**

**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. *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 ~~or Club~~

A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun ~~or club~~ and 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)*

JW 7/6/19: HB 446, effective 9/1/2019. Removed club from this TPC provision.

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)*

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)*

~~“Club”~~

~~A “club” is an instrument specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, including a blackjack, nightstick, mace, and tomahawk. *Penal Code 46.01(1)*~~

JW 7/8/19: The definition of club hasn't been repealed, but I deleted it because this policy no longer references a club.

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. A short-barrel firearm (rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a rifle or shotgun that, as altered, has an overall length of less than 26 inches). *Penal Code 46.01(10)*
4. A firearm silencer (any device designed, made, or adapted to muffle the report of a firearm), unless the firearm silencer is classified as a curio or relic by the United States Department of Justice or the actor otherwise possesses, manufactures, transports, repairs, or sells the firearm silencer in compliance with federal law. *Penal Code 46.01(4)*

~~Knuckles (any instrument consisting of finger rings or guards made of a hard substance that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles). *Penal Code 46.01(8)*~~

**JW 7/6/19: HB 446, effective 9/1/2019. TPC 46.01(8) is repealed and removed from the list in 46.05(a).**

5. 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)*
6. 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)*
7. 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)*

8. 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)*
9. 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(189)*

JW 7/6/19: HB 4170, effective 9/1/2019, redesignates this section as amended by HB 913, in 2017.

~~9.~~

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, shall 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(b)* [See FB]

**Education Code  
Chapter 26**

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)*

Unless otherwise provided by law, a board, an administrator, an educator, or other person may not limit parental rights. *Education Code 26.001(c)*

'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*

Complaint  
Procedures

A board shall provide for procedures to consider complaints that a parent's right has been denied. *Education Code 26.001(d)*

A board shall adopt a grievance procedure under which the board shall address each complaint that it receives concerning a violation of a right guaranteed by Education Code Chapter 26 (Parental Rights).

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 complaint concerning a student's participation in an extracurricular activity that does not involve a violation of a right guaranteed by Education Code Chapter 26. 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.

*Education Code 26.011*

Parental Rights

Parental rights listed in Education Code Chapter 26 are:

1. Rights concerning academic programs. *Education Code 26.003* [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. *Education Code 26.006* [See EF 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* [See DF, FFE, and FM]
7. Right to information concerning special education and education of students with learning disabilities. *Education Code 26.0081* [See FB]
8. Requests for public information. *Education Code 26.0085* [See GBA]
9. Consent required for certain activities. *Education Code 26.009* [See EHA, FFE, FL, FM, and FO]
10. Refusal of psychiatric or psychological treatment of child as basis for report of neglect. *Education Code 26.0091* [See FFG]
11. Exemption from instruction. *Education Code 26.010* [See EMB]

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)(5)*

~~11.~~ JW 7/8/19: HB 3145, effective 6/14/2019. Note: we do not include the other conservator rights under TFC 153.073(a) in policy. We do cite records information in FL.

**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]

**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*

**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*

**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)*

### **Disruption**

It is a criminal offense for a person, with intent to prevent or disrupt a lawful meeting, to substantially obstruct or interfere with the ordinary conduct of a meeting by physical action or verbal utterance and thereby curtail the exercise of others' First Amendment rights. *Penal Code 42.05; Morehead v. State, 807 S.W. 2d 577 (Tex. Crim. App. 1991)*

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**Note:** See EHBAB for provisions concerning students with disabilities; see the FO series for provisions concerning student discipline; see FL for provisions concerning student records.

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**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.
  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; ~~or~~
    - d. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct; ~~or~~
    - 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.
- ~~e.~~ JW 7/6/19: HB 811, effective 5/24/2019, applies 2019-20 school year.
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).

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 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\(d\)\(2\)](#)

**JW 7/1/19: SB 1707, effective 6-2-2019.**

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.  <i>Education Code 37.001(b-1)-(c)</i>
Notice to Parents	Each school year, a district shall provide parents with notice of and information regarding the Student Code of Conduct. <i>Education Code 37.001(d)</i>
<i>Noncustodial Parent</i>	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. <i>Education Code 37.0091</i>
<b>Copies to Staff</b>	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. <i>Education Code 37.018</i>
<b>Campus Behavior Coordinator</b>	A 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.
Duties	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.
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 [see CQA], for each campus, the e-mail 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

**JW 7/6/19: SB 1306, effective 5/28/2019. KGC cross references CQA to this policy.**

**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 course-work 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 course work that does not require the use of the Internet. *Education Code 37.005(e)*

JW 7/6/19: HB 3012, effective 6/14/2019.

I did not include HB 692, related to out-of-school suspension of homeless students in FO because I put it in FOB. Is that the proper placement?

JW 7/25/19: Confirmed that it is.

**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)*

#### 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)*

“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. *Education Code 37.0021(b)(1)*

#### 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 provided 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 ~~C~~Corporal ~~P~~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;

**JW 7/20/19: HB 3630 added supervision. According to SO, only substantive difference between the two bills.**

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

6. Employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;
7. Impairs the student's breathing, including any procedure that involves:
  - a. Applying pressure to the student's torso or neck; or
  - b. Obstructing the student's airway, including placing an object in, on, or over the student's mouth or nose or placing a bag, cover, or mask over the student's face;
8. Restricts the student's circulation;
9. Secures the student to a stationary object while the student is in a sitting or standing position;
10. Inhibits, reduces, or hinders the student's ability to communicate;
11. Involves the use of a chemical restraint;
12. Constitutes a use of timeout that precludes the student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals included in the student's individualized education program, including isolating the student by the use of physical barriers; or
13. Except as provided ~~by~~ 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)

**JW 7/6/19: SB 712, effective 6/10/2019. According to SO, identical to HB 3630.**

### Videotapes and Recordings

A district employee is not required to obtain the consent of a child's parent before the employee 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 school-district may not discipline a teacher on the basis of the submitted documentation. Education Code 37.002(b-1)

**JW 7/25/19: SB 1451, effective 6-10-2019. Originally placed in DG, but moved here after more discussion.**

### 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
- ~~5.4.~~ 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*

JW 7/6/19: HB 65, effective 6/14/2019. Applies beginning 2019-20 school year. In subsection 4, above, I can probably omit the TEC reference and just say student code of conduct, but I wanted to get a second opinion on that.

**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:

1. Who has been documented by the teacher to repeatedly interfere 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; or
2. Whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously 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.

*Education Code 37.002(b)*

[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\(e\)](#)

[\[See DNA for information about teacher evaluations and disciplinary referrals.\]](#)

[JW 7/6/19: SB 1451, effective 6-10-2019. Coordinated with MT re: cross reference with DNA for \(a-1\). MT included \(b-1\) in DG.](#)

[JW 7/25/19: Put \(b-1\) in FO. Deleted duplicative teacher evaluation in \(a-1\) and added a cross reference instead.](#)

STUDENT DISCIPLINE  
REMOVAL BY TEACHER OR BUS DRIVER

FOA  
(LEGAL)

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]. <i>Education Code 37.002(c)</i>
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.
Appeals	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.
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.  <i>Education Code 37.009(a)</i>
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. <i>Education Code 37.009(a); -001(a)(4)</i>  <a href="#">[See also Mitigating Factors in FO Student Code of Conduct, item 4, at FO(LEGAL) for mitigating factors.]</a>

**JW 7/25/19: Because TEC 37.001 was amended to include additional mitigating factors (students who are homeless or in foster care), I've**



[added the cross reference to FO instead of duplicating the material here.](#)

*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)*

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**Note:** A power granted to a campus principal under Education Code Chapter 37, Subchapter A may be exercised by the CBC.

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**Return to Class**

The principal may not return the student to the class of the teacher who removed the student without the teacher's consent, unless the placement review committee determines that such placement is the best or only alternative available.

If the teacher removed the student from class because the student engaged in the elements of an offense listed in Education Code 37.006(a)(2)(B) or 37.007(a)(2)(A) or (b)(2)(C) (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 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*

**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.

STUDENT DISCIPLINE  
REMOVAL BY TEACHER OR BUS DRIVER

FOA  
(LEGAL)

The principal shall respond by employing appropriate discipline management techniques consistent with the Student Code of Conduct.

*Education Code 37.0022*

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**Note:** See FOF for provisions concerning students with disabilities.

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**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 suspended.  
*Education Code 37.005(a)*

Maximum Length

A suspension may not exceed three school days. *Education Code 37.005(b)*

[\[See FO for provisions regarding coursework to students in suspension.\]](#)

[JW 7/6/19: HB 3012, effective 6/14/2019. This is also in FO. Should I remove it from here?](#)

[JW 7/25/19: Removed information that was also in FO and added a cross reference instead.](#)

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 contains the elements of a violent offense related under Penal Code 22.01, 22.011, 22.02, 22.021; or
3. 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 by ~~Education Code 37.005\(c\)\(1\)-\(3\)~~ at items 1–3, 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 ~~this subsection~~ 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\(d\)](#)

**JW 7/6/19: HB 692, effective, 6/7/2019. Should I omit the definition of homeless? This is the consistent definition of homeless throughout the Ed Code now. Should I also put this in FO?**

**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*

**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. *Education Code 37.006*

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. Marijuana or 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.;
  - b. A dangerous drug, as defined by the Texas Dangerous Drug Act, Health and Safety Code Chapter 483.
4. 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.
5. 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.
6. Engages in conduct that contains the elements of the offense of public lewdness under Penal Code 21.07.
7. Engages in conduct that contains the elements of the offense of indecent exposure under Penal Code 21.08.

7.8. 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 ~~school~~ district.

*Education Code 37.006(a)*

JW 7/6/19: SB 2432, effective 9/1/2019. Should I list these out in more detail?

(1) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person's family or household, or the person's property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

(7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.

JW 7/25/19: Did not add as per advice from CVC, LRS, JOY.

<i>Exception</i>	Removal to a DAEP for school-related misconduct is not required if the student is expelled for the same conduct. <i>Education Code 37.006(m)</i>
Retaliation	Except where a student engages in retaliatory acts against a district employee for which expulsion is mandatory [see FOD], a student shall be removed from class and placed in a DAEP if the student engages in conduct on or off school property containing the elements of retaliation under Penal Code 36.06, against any school employee. <i>Education Code 37.006(b)</i>
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: <ol style="list-style-type: none"><li>1. The student receives deferred prosecution under Family Code 53.03 for conduct defined as a felony offense in Penal Code Title 5 or the felony offense of aggravated robbery under Penal Code 29.03;</li></ol>

2. A court or jury finds that the student has engaged in delinquent conduct under Family Code 54.03 for conduct defined as a felony offense in Penal Code Title 5 or the felony offense of aggravated robbery under Penal Code 29.03; or
3. The superintendent or designee has a reasonable belief that the student has engaged in conduct defined as a felony offense in Penal Code Title 5 or the felony offense of aggravated robbery under Penal Code 29.03.

*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]

**JW 7/25/19: SB 1235, effective 9/1/2019. There was some initial confusion between MT and I on the placement of SB 2135, but CVC recommends that this go here.**

*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 Children. *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 14 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 ~~as specified in Penal Code 22.01(b), (b-1), and (b-2)~~. *Penal Code 22.01*
- 20. JW 7/10/19: HB 4170 redesignated one of the (b-2)s in this section as (b-3), but after talking with SO, she says that she wouldn't limit this list with the "as specified" and that removing that language better matches the SCOC.**
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. *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 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*

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

	<p>appropriate administrator did not have knowledge of the conduct before the first anniversary of the date the conduct occurred. <i>Education Code 37.006(n)</i></p>
<p>Certain Organization and Gang Membership and Solicitation</p>	<p>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]. <i>Education Code 37.121(b)</i></p>
<p><b>Older Students</b></p>	<p>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. <i>Education Code 25.001(b-1)</i></p>
<p><b>Placement of Younger Students</b></p>	<p>A student who is younger than ten 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. <i>Education Code 37.006(f), .007(e)</i> [See FOD]</p>
<p>Students Younger Than Six</p>	<p>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. <i>Education Code 37.006(l), .007(e)(2)</i></p>
<p><b>Process for Removal Conference</b></p>	<p>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.</p>
<p>Mitigating Factors</p>	<p>Before ordering removal to a DAEP, 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</p>

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]

Term of Removal

~~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 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), (d)~~

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)

JW 2/10/19: SB 1067 appears to have deleted "district employees or extended placement is in the best interest of the student" in 2015 in subsection A. But the language still appears in (d). Subsections (a) and (d) appear to conflict.

JW 3/5/19: After reading the Code of Construction Act, I've come to a different conclusion than SO did on May 10, 2016 in a prior update. I think it's possible to read the two together. TEC 37.009(a) imposes a limitation to the duration of placement for all removal situations from the classroom. Whereas TEC 37.009(d) applies to a removal to a DAEP exclusively. The requirement exists as an additional consideration for DAEPs only.

The edits above reflect both statutes. For readability purposes, it would be nice to combine the statutes (as done in previous updates) or just cite to (d) and remove (a).

Code of Construction Act

Tex Govt Code 311.026: Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL. (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

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)*

**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. [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)*

STUDENT DISCIPLINE  
PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING

FOC  
(LEGAL)

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]

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**Note:** See FOF for provisions concerning students with disabilities.

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A disciplinary alternative education program (DAEP) is an educational and self-discipline alternative instruction program for students in elementary through high school grades who are removed from their regular classes for mandatory or discretionary disciplinary reasons and placed in a DAEP. *19 TAC 103.1201(a)*

**Joint / Contracted  
DAEP**

A district may provide a DAEP jointly with one or more other districts, or may contract with third parties for DAEP services. The district must require and ensure compliance with district responsibilities that are transferred to the third-party provider. *Education Code 37.008(d); 19 TAC 103.1201(d)*

A DAEP may provide for a student's transfer to a different campus, a school-community guidance center, or a community-based alternative school. *Education Code 37.008(b)*

**Community  
Organizations**

A district shall cooperate with government agencies and community organizations that provide services in the district to students placed in a DAEP. *Education Code 37.008(e)*

**Funding**

A student removed to a DAEP is counted in computing a district's average daily attendance for the student's time in actual attendance in the program. *Education Code 37.008(f)*

A district shall allocate to a DAEP the same expenditure per student attending the DAEP that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program. *Education Code 37.008(g)* [See also EHBC(LEGAL), Limit on DAEP Expenditures]

**Location**

A DAEP shall be provided in a setting other than the student's regular classroom and may be located on or off a regular school campus. *Education Code 37.008(a)(1)–(2)*

An off-campus DAEP is not subject to a requirement imposed by the Education Code, other than a limitation on liability, a reporting requirement, or a requirement imposed by Education Code Chapter 37 or Chapter 39 or 39A. *Education Code 37.008(c)*

An elementary school student may not be placed in a DAEP with a student who is not an elementary school student. The designation of elementary and secondary is determined by adopted local policy. *Education Code 37.006(f); 19 TAC 103.1201(h)(1)*

Students who are assigned to the DAEP shall be separated from students who are not assigned to the program. Notwithstanding this requirement, summer programs provided by the district may serve students assigned to a DAEP in conjunction with other students, as determined by local policy.

Students in the DAEP shall be separated from students in a juvenile justice alternative education program (JJAEP).

*Education Code 37.008(a)(3), (c); 19 TAC 103.1201(f)(3), (h)(3)*

**Safety**

A district is responsible for the safety and supervision of the students assigned to the DAEP; however, the immunity from the liability established in Education Code 22.0511 [see DG], shall not be impacted. The DAEP staff shall be prepared and trained to respond to health issues and emergencies.

Each district shall establish a board-approved policy for discipline and intervention measures to prevent and intervene against unsafe behavior and include disciplinary actions that do not jeopardize students' physical health and safety, harm emotional well-being, or discourage physical activity.

*19 TAC 103.1201(h)*

**Staffing**

A DAEP shall employ only teachers who meet certification requirements under Education Code Chapter 21, Subchapter B. The certified teacher-to-student ratio in a DAEP shall be one teacher for each 15 students in elementary through high school grades.

*Education Code 37.008(a)(7); 19 TAC 103.1201(h)(1)*

Staff at each DAEP shall participate in training programs on education, behavior management, and safety procedures that focus on positive and proactive behavior management strategies. The training programs must also target prevention and intervention that include:

1. Training on the education and discipline of students with disabilities who receive special education services;
2. Instruction in social skills and problem-solving skills that addresses diversity, dating violence, anger management, and conflict resolution to teach students how to interact with teachers, family, peers, authority figures, and the general public; and
3. Annual training on established procedures for reporting abuse, neglect, or exploitation of students.

*19 TAC 103.1201(i)*

**Entrance Procedures**

Procedures for each DAEP shall be developed and implemented for newly-entering students and their parents or guardians on the expectations of the DAEP. These procedures shall include written contracts between students, parents or guardians, and the DAEP that formalize expectations and establish the students' individual plans for success. *19 TAC 103.1201(j)*

**Academics**

The academic mission of DAEPs shall be to enable students to perform at grade level. A DAEP shall focus on English language arts, mathematics, science, history, and self-discipline. *Education Code 37.008(a)(4), (m)*

A district shall provide an academic and self-discipline program that leads to graduation and includes instruction in each student's currently enrolled foundation curriculum necessary to meet the student's individual graduation plan, including special education services. A student's four-year graduation plan (Minimum, Recommended, or Advanced/Distinguished Achievement) may not be altered when the student is assigned to a DAEP.

**Opportunity to Complete Course**

A district shall offer a student removed to a DAEP an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal, before the beginning of the next school year, through any method available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this provision.

*Education Code 37.008(l); 19 TAC 103.1201(f)*

A district shall provide the parents of a student removed to a DAEP with written notice of the district's obligation to provide the student with an opportunity to complete coursework required for graduation. The notice must include information regarding all methods available for completing the coursework and state that the methods are available at no cost to the student. *Education Code 37.008(l-1)*

**Accountability**

The campus of accountability for student performance must be the student's locally assigned campus, including when the district or shared services arrangement contracts with a third party for DAEP services. *19 TAC 103.1201(e)*

**Academic Assessments**

A district shall administer to a student placed in a DAEP program for a period of 90 school days or longer an assessment instrument:

1. Initially on placement of the student in the program; and
2. Subsequently on the date of the student's departure from the program, or as near that date as possible.

Released state assessments for reading and mathematics for the appropriate grade may be used. A district may apply for approval of an assessment that includes the Texas Essential Knowledge and Skills (TEKS) for reading and mathematics for the student's assigned grade. The commissioner will publish on the [Texas Education Agency \(TEA\)](#) website a list of assessments approved for use in each school year.

The grade level of an assessment shall be based upon the academic grade completed prior to the student being assigned to a DAEP if placement occurs in the fall or first semester of the academic school year. If placement occurs in the spring or second semester of the academic school year, the student shall be administered an assessment based on the current grade level.

Each district shall provide an academic report to the student's locally assigned campus, which shall include the pre- and post-assessment results of the student's basic skills in reading and mathematics, within ten days of the student completing the post-assessment.

Procedures for administering the pre- and post-assessment shall be developed and implemented in accordance with local school district policy.

A student in the district's DAEP must also be assessed under the requirements of the Education Code Chapter 39. [See EKB]

*Education Code 37.0082; 19 TAC 103.1203*

### **Special Populations**

#### Special Education

A DAEP serving a student with a disability who receives special education services shall provide educational services that will support the student in meeting the goals identified in the individualized education program (IEP) established by a duly-constituted admission, review, and dismissal (ARD) committee, in accordance with Education Code 37.004 and federal requirements. *19 TAC 103.1201(g)*

#### Drug and Alcohol Treatment

A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Education Code 37.006 and 37.007. A DAEP that provides chemical dependency treatment services must be licensed under Health and Safety Code Chapter 464. *Education Code 37.008(k)*

### **Transition Services**

The transition services established for a student who is exiting a DAEP and returning to the student's locally assigned campus shall be implemented and updated annually as needed. The transition procedures shall include:

1. An established time line for the student's transition from the DAEP to the student's locally assigned campus; and
2. Written and oral communication from the DAEP staff to the locally assigned campus during the student's assignment to the DAEP, including the student's educational performance and tasks completed.

*19 TAC 103.1201(k)*

Transition to the  
Regular Classroom

"Alternative education program" includes:

1. A disciplinary alternative education program operated by a school district or open-enrollment charter school;
2. A juvenile justice alternative education program; and
3. A residential program or facility operated by or under contract with the Texas Juvenile Justice Department, a juvenile board, or any other governmental entity.

Education Code 37.023(a)

After Determination  
of the Release Date

As soon as practicable after an alternative education program determines the date of a student's release from the program, the alternative education program administrator shall:

1. Provide written notice of that date to:
  - a. The student's parent or a person standing in parental relation to the student; and
  - b. The administrator of the campus to which the student intends to transition; and
2. Provide the campus administrator:
  - a. An assessment of the student's academic growth while attending the alternative education program; and
  - b. The results of any assessment instruments administered to the student.

Education Code 37.023(b)

Coordination After  
Release

Not later than five instructional days after the date of a student's release from an alternative education program, the campus administrator shall coordinate the student's transition to a regular classroom. The coordination must include assistance and recommendations from:

1. School counselors;
2. School district peace officers;
3. School resource officers;
4. Licensed clinical social workers as defined by Occupations Code 505.002;
5. Campus behavior coordinators;
6. Classroom teachers who are or may be responsible for implementing the student's personalized transition plan; and

7. Any other appropriate school district personnel.

Education Code 37.023(c)

Personalized  
Transition Plan

The assistance described above must include a personalized transition plan for the student developed by the campus administrator. A personalized transition plan:

1. Must include recommendations for the best educational placement of the student; and

2. May include:

a. Recommendations for counseling, behavioral management, or academic assistance for the student with a concentration on the student's academic or career goals;

b. Recommendations for assistance for obtaining access to mental health services provided by the district or school, a local mental health authority, or another private or public entity;

c. The provision of information to the student's parent or a person standing in parental relation to the student about the process to request a full individual and initial evaluation of the student for purposes of special education services under Education Code 29.004; and

d. A regular review of the student's progress toward the student's academic or career goals.

Education Code 37.023(d)

Parent Meeting

If practicable, the campus administrator, or the administrator's designee, shall meet with the student's parent or a person standing in parental relation to the student to coordinate plans for the student's transition.

Applicability

Education Code 37.023 applies only to a student subject to compulsory attendance requirements under ~~Section~~ Education Code 25.085 [see FEA].

Education Code 37.023(e)-(f)

JW 7/6/19: HB 2184, 6/10/2019. This is where SO recommended we put this new law, but these are not DAEP specific. I haven't figured out the right placement. I considered FOE, FO, or FFC.

If I leave this here, I will have to find a way to add cross references in FODA and maybe EEM. I can also just add all of this material at FODA but it seems unnecessarily duplicative.

**Students Younger Than Ten**

A student younger than ten 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

A student shall be expelled if the student, on school property or while attending a school-sponsored or school-related activity 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, aggravated kidnapping, aggravated robbery, manslaughter, criminally negligent homicide, or continuous sexual abuse of a young child or children, as those offenses are defined in the Penal Code; or
3. Commits a drug- or alcohol-related offense described at Education Code 37.006(a)(2)(C) or (D), if that conduct is punishable as a felony.

*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)*

Retaliation

A district shall expel a student who engages in conduct that contains the elements of any offense listed above against any district employee or volunteer in retaliation for or as a result of the person's employment or association with a district, 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 of school property. *Education Code 37.007(d)*

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 ten 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 ten 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 hav-

ing a propellant charge of more than four ounces, missile having 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 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 an offense under Penal Code 22.01(a)(1) against a school district employee, or a volunteer as defined by Education Code 22.053.
4. 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)*

STUDENT DISCIPLINE  
EXPULSION

FOD  
(LEGAL)

- Conduct Within 300 Feet of School
- Subject to the mandatory expulsion requirement for retaliation, 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 the following conduct:
1. Any conduct for which expulsion would have been mandatory under Education Code 37.007(a) [see Mandatory Expulsion—School Related, above]; or
  2. Possession of a firearm, as defined by 18 U.S.C. sec. 921 [see Federal Firearm Provision, above].

*Education Code 37.007(b)(3)*

- Retaliation Against School Employee or Volunteer
- A student may be expelled if the student engages in an assault, under Penal Code 22.01(a)(1), on an employee or volunteer in retaliation for or as a result of the person's employment or association with a district, 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. *Education Code 37.007(d)*

- Conduct Against Another Student
- A student may be expelled if the student engages in conduct against another student that contains the elements of the offenses of aggravated assault, sexual assault, aggravated sexual assault, arson, murder, capital murder, criminal attempt to commit capital murder, or aggravated robbery, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property. *Education Code 37.007(b)(4)*

- 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)(5)*

**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 Penal 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)*

Property or  
Activities of Another  
District

A district may expel a student who attends school in the district if:

1. The student engages in conduct for which expulsion would have been mandatory if the conduct had occurred on district property or while attending a district-sponsored or district-related activity; and
2. The student engages in that conduct on the property of another district or while attending a school-sponsored or school-related activity of another district in this state.

*Education Code 37.007(i)*

**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 County Bd. of Educ.*, 748 F.2d 1077 (5th Cir. 1984); *McClain v. Lafayette County 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 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 also Mitigating Factors in FO Student Code of Conduct, item 4, at FO\(LEGAL\) for 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)*

[JW 7/10/19: Suggested by Cezv Collins. See email thread from May 14, 2019, indicating that this was an accidental omission.](#)

[JW 7/25/19: FO contains the SCOC required mitigating factors, including the new homeless and foster care provisions from HB 811.](#)

**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 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

*Contracting for Services*

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]

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 220,000; 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)*

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**Note:** See FOF for provisions concerning expulsion of students with disabilities.

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**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 180,000 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 220,000; 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)*

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**Note:** The following provisions apply to all districts that operate JJAEPs, whether voluntary or mandatory.

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**Placement of  
Students in JJAEP—  
Expelled Students**

Court-Ordered  
Placement

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]

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), (d), 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: [JW 7/6/19: HB 3012, effective 6/14/2019.](#)

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.

tion over the student. This provision does not require that educational 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)*

[\[For information on the transition to the regular classroom, see FOCA.\]](#)

**[JW 7/6/19: HB 2184, effective 6/10/2019. Either a cross reference or information on transitions duplicated at FOCA will go here. What do you think? It seems really duplicative.](#)**

**Funding for JJAEPs**

Mandatory  
Expulsions

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)*

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)*

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**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].

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**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), (d), 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 necessary 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*

STUDENT DISCIPLINE  
STUDENTS WITH DISABILITIES

FOF  
(LEGAL)

**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)*

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**Note:** The provisions below apply only to students eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA).

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**Students Receiving Special Education Services**

All disciplinary actions regarding students with disabilities must be determined in accordance with 34 C.F.R. 300.101(a) and 300.530–300.536; Education Code Chapter 37, Subchapter A; and 19 Administrative Code 89.1053 (~~relating to~~ Procedures for Use of Restraint and Time-Out). *19 TAC 89.1050(k)*

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*

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 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 Ten 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 ten 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 Ten Days or Less**

School personnel may remove the student for additional removals of not more than ten 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 ten school days in the same school year, during any subsequent removal of ten 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 [see Manifestation Determination, below]. *Education Code 37.004*

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 ten consecutive school days; or
2. Subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than ten 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 ten 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 tele-

phone 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)*

STUDENT DISCIPLINE  
STUDENTS WITH DISABILITIES

FOF  
(LEGAL)

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*

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 occurs 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)*



STUDENT DISCIPLINE  
STUDENTS WITH DISABILITIES

FOF  
(LEGAL)

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)*

[\[For restrictions on aversive techniques, see FO.\]](#)

**JW 7/6/19: SB 712, effective 6.10.2019. Some of the new TEC 37.0032 does reference special education, but it would be hard to pull it out without context. Is this sufficient or should I put more here?**

School Peace Officers

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); 19 TAC 89.1053(l)*

Exceptions

Education Code 37.0021 (regarding 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(l), (m)*

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)*

**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** 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)*

“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.

**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)–(2)*

*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 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

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 BIP 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)*

"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)**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).

STUDENT DISCIPLINE  
STUDENTS WITH DISABILITIES

FOF  
(LEGAL)

*Documentation*

Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. 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)*

## STUDENT FEES, FINES, AND CHARGES

FP  
(LEGAL)

### 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].

STUDENT FEES, FINES, AND CHARGES

FP  
(LEGAL)

13. A fee for a course offered during summer school, except that the board may charge a fee for a course required for graduation 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 [428.155\(d\)](#).
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 [48.1512-155](#) and does not participate in a county transportation system for which an allotment is provided under Education Code [428.155\(i\)](#), a reasonable fee for the transportation of a student to and from the school the student attends.

*Education Code 11.158(a), (d), (h)*

**[JW 7/8/19: HB 3, effective 9/1/2019. Section 3.006.](#)**

17. A fee for enrollment in an electronic course provided through the Texas virtual school network (TXVSN) in accordance with Education Code 30A.155. *Education Code 30A.155* [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.

STUDENT FEES, FINES, AND CHARGES

FP  
(LEGAL)

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)*

<b>Nondiscrimination</b>	<p>No person shall, on the grounds of race, color, or national origin, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any district program or activity. <i>42 U.S.C. 2000d</i></p> <p>An officer or employee of a district who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:</p> <ol style="list-style-type: none"> <li>1. Refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the district;</li> <li>2. Refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the district;</li> <li>3. Refuse to grant a benefit to the person; or</li> <li>4. Impose an unreasonable burden on the person.</li> </ol> <p><i>Civil Practices and Remedies Code 106.001(a)</i></p>
<b>Individuals with Disabilities</b>	<p>No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a district, or be subjected to discrimination by a district. Nor shall a district exclude or otherwise deny equal services, programs, or activities to an individual because of the known disability of an individual with whom the individual is known to have a relationship or association. <i>42 U.S.C. 12132; 28 C.F.R. 35.130(g)</i></p>
<i>Definition</i>	<p>A "qualified individual with a disability" is an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a district. <i>42 U.S.C. 12131(2); 28 C.F.R. 35.104</i></p>
<i>Reasonable Modification</i>	<p>A district shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the district can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. <i>28 C.F.R. 35.130(b)(7)</i></p>
<i>Communications</i>	<p>A district shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. To this end, a district shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal</p>



opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by the district. In determining what type of auxiliary aid or service is necessary, a district shall give primary consideration to the requests of the individual with disabilities. *28 C.F.R. 35.160*

“Auxiliary Aids and Services”

“Auxiliary aids and services” includes:

1. Qualified interpreters, note-takers, transcription services, written materials, assistive listening systems, and other effective methods for making aurally delivered materials available to individuals with hearing impairments;
2. Qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods for making visually delivered materials available to individuals with visual impairments;
3. Acquisition or modification of equipment or devices; and
4. Other similar services and actions.

*28 C.F.R. 35.104*

*Limits of Required Modification*

A district is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. Any decision that compliance with its responsibility to provide effective communication for individuals with disabilities would fundamentally alter the service, program, or activity or unduly burden a district shall be made by a board after considering all resources available for use in funding and operating the program, service, or activity. The decision shall be accompanied by a written statement of the reasons for reaching that conclusion. *28 C.F.R. 35.164*

*Notice*

A district shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of Title II of the Americans with Disabilities Act (ADA) and its applicability to the services, programs, or activities of the district. The information shall be made available in such manner as the board and superintendent find necessary to apprise such persons of the protections against discrimination assured them by the ADA. *28 C.F.R. 35.106*

*Compliance Coordinator*

\*A district shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II of the ADA, including any investigation of any complaint communicated to it alleging its noncompliance or alleging any actions that would be prohibited under the ADA. A district shall make available

to all interested individuals the name, office address, and telephone number of the employee(s) so designated and shall adopt and publish procedures for the prompt and equitable resolution of complaints alleging any action that would be prohibited under the ADA. *28 C.F.R. 35.107*

\*Applies only to districts that employ 50 or more persons.

**State Prohibition**

*Non-Discrimination*

No person with a disability may be denied admittance to any public facility in the state because of the person's disability. No person with a disability may be denied the use of a white cane, assistance animal, wheelchair, crutches, or other device of assistance.

The discrimination prohibited by this section includes a refusal to allow a person with a disability to use or be admitted to any public facility, a ruse or subterfuge calculated to prevent or discourage a person with a disability from using or being admitted to a public facility and a failure to:

1. Comply with Government Code Chapter 469;
2. Make reasonable accommodations in policies, practices, and procedures; or
3. Provide auxiliary aids and services necessary to allow the full use and enjoyment of the public facility.

*Regulations*

Regulations relating to the use of public facilities by any designated class of persons from the general public may not prohibit the use of particular public facilities by persons with disabilities who, except for their disabilities or use of assistance animals or other devices for assistance in travel, would fall within the designated class.

*Human Resources Code 121.003(c)–(e)*

**Religious Freedom**

A district may not substantially burden a person's free exercise of religion, unless it is acting in furtherance of a compelling governmental interest and has used the least restrictive means of furthering that interest. *Civil Practice and Remedies Code 110.003* [See also DAA and FB]

A district may not penalize or withhold benefits or privileges, including tax exemptions or governmental contracts, grants, or licenses, from a religious organization, an organization supervised or controlled by or in connection with a religious organization, an individual employed by a religious organization while acting in the scope of that employment, or a clergy or minister, because the organization or individual refuses to solemnize any marriage or provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, or celebration

of any marriage if the action would cause the organization or individual to violate a sincerely held religious belief. *Family Code 2.601–.602*

Adverse Action  
Prohibited

Notwithstanding any other law, a district may not take any adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization. ~~Gov'ernment~~ Code 2400.002

Definitions

"Adverse action" means any action taken by a district to:

1. Withhold, reduce, exclude, terminate, or otherwise deny any grant, contract, subcontract, cooperative agreement, loan, scholarship, license, registration, accreditation, employment, or other similar status from or to a person;
2. Withhold, reduce, exclude, terminate, or otherwise deny any benefit provided under a benefit program from or to a person;
3. Alter in any way the tax treatment of, cause any tax, penalty, or payment assessment against, or deny, delay, or revoke a tax exemption of a person;
4. Disallow a tax deduction for any charitable contribution made to or by a person;
5. Deny admission to, equal treatment in, or eligibility for a degree from an educational program or institution to a person; or
6. Withhold, reduce, exclude, terminate, or otherwise deny access to a property, educational institution, speech forum, or charitable fundraising campaign from or to a person.

"Benefit program" means any program administered or funded by a governmental entity or federal agency that provides assistance in the form of payments, grants, loans, or loan guarantees.

"Person" has the meaning assigned by Government Code 311.005, except the term does not include:

1. An employee of a governmental entity acting within the employee's scope of employment;
2. A contractor of a governmental entity acting within the scope of the contract; or
3. An individual or a medical or residential custodial health-care facility while the individual or facility is providing medically necessary services to prevent another individual's death or imminent serious physical injury.

"Religious organization" means an organization that is a religious organization under Civil Practice and Remedies Code 110.011(b).

Gov~~ernment~~ Code 2400.001

Exception for Prohibited Contracts or Investments

This prohibition does not apply to an investment or contract with a company that boycotts Israel prohibited under Government Code Chapters 808 or 2270. [See CH] Gov~~ernment~~ Code 2400.0015

Interpretation

This prohibition may not be construed to:

1. Preempt a state or federal law that is equally or more protective of the free exercise of religious beliefs or to narrow the meaning or application of a state or federal law protecting the free exercise of religious beliefs; or
2. Prevent a district from providing, either directly or through a person who is not seeking protection under this prohibition, any benefit or service authorized under state or federal law.

Gov~~ernment~~ Code 2400.005

**MT 7/5/19: SB 1978, effective 9/1/19, prohibits adverse actions based on support for religious organizations unless you support Palestinians. I chose not to include provisions on waiver of immunity and relief available if one sues a school district.**

**Social Security Numbers**

It shall be unlawful for a district to 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 above provision 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.

*5 U.S.C. 552a Note; PL 93-579, § 7, 88 Stat. 1896 (1974)*

**Public Information  
Defined**

For purposes of the Texas Public Information Act (PIA), “public information” means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

1. By a board;
2. For a board and the board:
  - a. Owns the information;
  - b. Has a right of access to the information; or
  - c. Spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
3. By an individual officer or employee of a district in the officer’s or employee’s official capacity and the information pertains to official business of the district.

“Official business” means any matter over which a district has any authority, administrative duties, or advisory duties.

Information is “in connection with the transaction of official business” if the information is created by, transmitted to, received by, or maintained by an officer or employee of the district in the officer’s or employee’s official capacity, or a person or entity performing official business or a governmental function on behalf of a district, and pertains to official business of the district.

The definition of “public information” above applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

*Gov’t Code 552.002(a)–(a-2), .003(2-a)*

**Forms of Public  
Information**

The general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

The media on which public information is recorded include:

1. Paper;
2. Film;

3. A magnetic, optical, solid state, or other device that can store an electronic signal;
4. Tape;
5. Mylar; and
6. Any physical material on which information may be recorded, including linen, silk, and vellum.

*Gov't Code 552.002(b)–(c)*

Preservation of Information

A district may determine a time for which information that is not currently in use will be preserved, subject to any applicable rule or law governing the destruction and other disposition of state and local government records or public information.

The provisions of Chapter 441, Government Code and Title 6, Local Government Code (Local Government Records Act), governing the preservation, destruction, or other disposition of records or public information apply to records and public information held by a temporary custodian.

*Gov't Code 552.004(a), (c)* [See BBI, CPC, DH]

**MT 7/25/19: Lots of xrefs. Should we provide some more specificity?**

Temporary Custodians

"Temporary custodian" means an officer or employee of a district who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the officer for public information or the officer's agent. The term includes a former officer or employee who created or received public information in ~~their~~the officer's or employee's official capacity that has not been provided to the officer for public information or the officer's agent. *Gov't Code 552.003(7)*

No Property Right to Public Information

A current or former board member or employee of a district does not have, by virtue of ~~their~~the board member's or officer's position or former position, a personal or property right to public information ~~they~~the board member or employee created or received while acting in an official capacity.

Surrender or Return of Public Information

A temporary custodian with possession, custody, or control of public information shall surrender or return the information to the district not later than the 10th day after the date the officer for public information or the officer's agent requests the temporary custodian to surrender or return the information.

Disciplinary Action

A temporary custodian's failure to surrender or return public information as required is grounds for disciplinary action by the district or any other applicable penalties provided by the PIA or other law.

Calculating  
Timelines

For purposes of requesting an attorney general opinion related to 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 GBAA]

Gov't Code 552.233

MT 7/7/19: SB 944, section 2 provides definition of temporary custodians; section 3 amends current law related to preservation of information. SB 944, section 6, adds requirement for temporary custodians. I put the obligation to surrender and return information at DH along with the disciplinary

MT 7/25/19: Moved Surrender or Return and Disciplinary Action from DH to here to address Joy, LRS, and CVC comments.

In order to present the statute more completely here, I added Calculating Timelines with xref to GBAA.

**Online Message  
Board**

If a board maintains an online message board or similar Internet application under Government Code 551.006 [see BBI], and the board removes from the online message board or similar Internet application a communication that has been posted for at least 30 days, the board shall maintain the posting for a period of six years. This communication is public information and must be disclosed in accordance with the PIA. *Gov't Code 551.006(d)*



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**Right of Access to  
Public Information**

Public information is available, at a minimum, to the public during a district's normal business hours. *Gov't Code 552.021*

Availability

Information That  
Must Be Disclosed

The following categories of information are public information and not excepted from required disclosure unless made confidential under Government Code Chapter 552 or other law:

1. A completed report, audit, evaluation, or investigation made of, for, or by a board, 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 funds.
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 organization and 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, description of forms available or the places where 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 and a statement of general policy or interpretation of general applicability formulated and adopted by the board.
10. Any amendment, revision, or repeal of the information described in items 6–9.
11. Final opinions and orders issued in 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*

Certain "contracting information," as that term is defined in Government Code 552.003(7), is public and must be released unless excepted from disclosure under the Public Information Act (PIA). The exceptions to disclosure provided by Government Codes 552.110 (trade secrets) and 552.1101 (proprietary information) do not apply to certain types of contracting information.

*Gov't Code 552.0222(a), (b)*

**MT 7/8/19: SB 943, section 2, creates new category of public information called "contracting information." The term is defined in section 1 of the bill. Providing a general reference here as the details of what is contracting information and what is or is not subject to disclosure are too much to include in policy.**

*Investment  
Information*

Certain district investment information, as specified by Government Code 552.0225, is public information and not excepted from disclosure. *Gov't Code 552.0225*

*Security System  
Information*

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 ~~Texas Public Information Act (PIA)~~. *Gov't Code 418.182(b)*

*Body-Worn  
Camera*

Except as set forth at Occupations Code Chapter 1701, Subchapter N, a recording from a body-worn camera that is or could be used as evidence in a criminal prosecution is subject to the requirements of the PIA.

However, 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.

*Occupations Code 1701.661*

Personal  
Information

*Employee /  
Board Member*

Each district employee, other than a peace officer or security officer, and board member and each former employee and board member shall choose whether to allow public access to district-held information relating to the person's home address, home telephone number, emergency contact information, or social security number, or any other information that reveals whether the person has family members. However, 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.

Employees and board members shall state their choice to a district's main personnel officer in a signed writing not later than the 14th day after employment begins, election or appointment to the board occurs, or service with the district ends. If an employee or board member fails to state his or her choice within 14 days, the information is available to the public. However, an employee or board member may make a written request at any time to the personnel officer to open or close the information. A written request made after the 14 days does not apply to an open records request made before the option was exercised.

*Gov't Code 552.024; Tex. Atty. Gen. ORD 530 (1989)*

*Notice to  
Requestor*

If an employee or board member has opted to restrict public access to his or her personal information, the district may redact the personal information from any information the district discloses without the necessity of requesting a decision from the attorney general. *Gov't Code 552.024(c)*

If a district redacts information under this provision, the district 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-2)*

Special Rights of  
Access

*Employees*

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 the district that relates to the employee and that is protected from public disclosure by laws intended to protect the employee's privacy interests. [See DBA] *Gov't Code 552.023*

*Board Members*

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. [See BBE] *Education Code 11.1512; Atty. Gen. Op. JM-119 (1983)*

Information District Is Not Required to Release  <i>Commercial Information</i>	A district is not required 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. 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 district. <i>Gov't Code 552.027</i>
<i>Request for Information from Incarcerated Individual</i>	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 PIA. This section does not prohibit a district from disclosing to an incarcerated individual or the individual's agent information that pertains to the individual. <i>Gov't Code 552.028</i>
Voluntary Disclosure	A board or the officer for public information voluntarily may make part or all of its records available to the public, unless the disclosure is expressly prohibited by law or the records are confidential by law. <i>Gov't Code 552.007</i>
<b>Confidential Information Under the Public Information Act or Other Law</b>	A person commits a misdemeanor offense if the person distributes information considered confidential under the terms of the PIA. A violation of this section also constitutes official misconduct. <i>Gov't Code 552.352</i>
Information That May Not Be Disclosed  <i>Student Records</i>	<p>Information is confidential and excepted from required disclosure if it is information in a student record at a district.</p> <p>"Student record" means information that constitutes education records as that term is defined by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g(a)(4)) [see FL] and information in a record of an applicant for admission to an educational institution, including a transfer applicant.</p> <p>A district may disclose or provide information included in an education record as authorized by 20 U.S.C. Section 1232g or other federal law. [See FL] In addition, a student record shall be made available upon request to district personnel, the student, the student's</p>

parents, guardian, or spouse, or a person conducting a child abuse investigation required by Family Code Chapter 261, Subchapter D.

Except as set forth in federal law (the Family Educational Rights and Privacy Act), a district shall not release personally identifiable information in education records without the written consent of the student's parents.

A district may redact information that constitutes a student record from information disclosed under the PIA without requesting a decision from the attorney general.

If an applicant for admission to an educational institution funded wholly or partly by state revenue, or a parent or legal guardian of a minor applicant to such an educational institution, 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 552.026, .114 [See FL]*

*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)*

*Evaluations*

A document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under the [PIA Public Information Act, Government Code Chapter 552](#). ~~[Education Code 21.355](#)~~

[At the request of a school district, open-enrollment charter school, or private school at which an 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\(a\), \(c\), \(d\)](#)

[MT 7/23/19: Added paragraphs above pursuant to CVC email 7/22/19.](#)

[SB 1230, effective 9/1/19, mandates giving TEA an evaluation document for purposes of investigations. The bill mandates providing the same to a requesting district. This provision was previously in the law as permissive, but was not included in policy.](#)

**Second paragraph [21.355 (d)] moved from DNA/DNB. Deleted references to (e) and (f) as they pertain to what TEA can do with the record after it is provided by the district.**

*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)*

*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 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*

*E-Mail Addresses  
Confidential*

An e-mail 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.

*Exceptions*

This confidentiality does not apply to an e-mail 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 section includes a state agency permit, certificate, approval, registration, or similar form of permission required by law.

A district may also disclose an e-mail address for any reason to another governmental body or to a federal agency.

*Gov't Code 552.137, 2001.003(2)*

*Victim of Abuse  
or Improper  
Relationship*

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 released 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 21.006(h)*

*Crime Victims*

Information relating to a participant in the Address Confidentiality Program for Victims of Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking of Persons under Code of Criminal Procedure Chapter 56, Subchapter C is confidential, except as provided by Code of Criminal Procedure 56.90, and may not be disclosed. *Code of Criminal Procedure 56.88*

A district employee who is a victim under the Crime Victim Compensation Act may elect whether to allow public access to information held by the district that would identify or tend to identify the victim, including a photograph or other visual representation of the victim. 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;
2. The date employment begins; or
3. The date the governmental body 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*

*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. *Gov't Code 552.138(b-1)*

**MT 7/7/19: HB 3091, effective 9/1/19, protects info related to shelter centers. Bill has additional information related to redacting information and criminal offenses for disclosing, but that seemed like too much information for PRM purposes.**

*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*

Criminal history record information obtained by the district from the Texas Department of Public Safety may not be disclosed to any person except:

1. The person who is the subject of the information;
2. The Texas Education Agency;
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)(1)* [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 the requirements of the PIA, regardless of the date that the image was taken or recorded.

"Sensitive crime scene image" means a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of

dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia. A district may not permit a person to view or copy the image except as provided by Government Code 552.1085.

*Gov't Code 552.1085(a)(6), (c)*

*School Marshal  
Identity*

The identity of a school marshal appointed under Education Code 37.0811 is confidential except as provided by Occupations Code 1701.260(j).

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 a school marshal. The notice may not disclose the identity of the school marshal.

*Education Code 37.0811(g), (h)*

*Closed Meeting  
Recording /  
Certified Agenda*

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)*

*Security  
Information*

Except as provided by the Texas Homeland Security Act, Government Code 418.182, 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 is confidential. *Gov't Code 418.182(a)*

The following information is confidential under Subchapter C of the PIA:

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 [CQCQB](#)]

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.

*Gov't Code 552.139(b), (c)*

*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. A district that obtains information from the record shall limit the use and disclosure of the information to the purpose for which the information was obtained. *Gov't Code 552.140; Atty. Gen. ORD 684 (2009)*

*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, are confidential and not subject to public disclosure. This provision applies to records in the custody of the district acting in cooperation with or on behalf of the retirement system. A 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 purposes of Government Code 825.507, "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, 825.507(g)*

*Peace / Security  
Officer  
Information*

District information related to the home address, home telephone number, emergency contact information, date of birth, or social security number of a peace officer or commissioned security officer, or information that reveals whether the officer has family members, is confidential and may not be released if the officer 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.

In accordance with Government Code 552.1175(h), a district may redact information that must be withheld under this section from any information the district discloses under the PIA 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 552.024(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 552.1175*

*Election Judges  
and Clerks*

An e-mail 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.

Exception

An e-mail 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*

*Cybersecurity  
Information*

A cyber threat indicator or defensive measure shared by or with a state, tribal, or local government under 6 U.S.C. 1503 shall be deemed voluntarily shared information and exempt from disclosure under any state or local freedom of information law, open government law, open meetings law, open records law, sunshine law, or similar law requiring disclosure of information or records. 6 U.S.C. 1503(d)(4)(B)

A cyber threat indicator or defensive measure shared with the federal government under Title 6, United States Code, shall be:

1. Deemed voluntarily shared information and exempt from disclosure under federal public information law and any state or local provision of law requiring disclosure of information or records; and
2. Withheld, without discretion, from the public under federal public information law and any state or local provision of law requiring disclosure of information or records.

6 U.S.C. 1504(d)(3) [See [CQCQB](#)]

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 PIA. Gov't Code 552.002(d)

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 the requirements of the PIA. Gov't Code 552.159

**MT 7/7/19: Both provisions above are from SB 944, effective 9/1/19.**

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

**MT 7/7/19: HB 3175, effective 9/1/19, makes info related to applications for disaster recovery funds confidential. Not sure how much of this type of info districts may have.**

**Information Excepted from Disclosure**

Except for social security numbers or as otherwise provided by law, information that is not confidential, but is excepted from required disclosure under Government Code sections 552.101–.151, 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 a 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*

Confidential by Law

	<p>Information is excepted from public disclosure if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision. <i>Gov't Code 552.101</i></p>
<p>Certain Personnel File Information</p>	<p>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, and transcripts from institutions of higher education maintained in files of professional employees; however, the degree obtained and the curriculum on the transcripts shall be subject to disclosure. <i>Gov't Code 552.102</i></p> <p>Disclosure of employee birth dates would constitute a clearly unwarranted invasion of personal privacy, and such dates are excepted from disclosure under Government Code 552.102(a), if the employees' privacy interests substantially outweigh the public interest in the information. <i>Texas Comptroller of Public Accts. v. Atty. Gen'l of Texas</i>, 354 S.W.3d 336 (Tex. 2010) (holding that a newspaper's stated reason for requesting state employees' dates of birth did not outweigh employees' privacy rights)</p> <p>Information is excepted from public disclosure if it is information in the custody of the district that relates to an employee or officer of the district 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. <i>Gov't Code 552.152</i></p>
<p>Information Relating to Litigation</p>	<p>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 at the time the district's public information officer receives the request. <i>Gov't Code 552.103</i></p>
<p>Information <del>That</del> <del>Advantages</del> <del>Competitors or</del> <del>Bidders</del><u>Related to</u> <u>Competition or</u> <u>Bidding</u></p>	<p>Information is excepted from public disclosure if <u>the district demonstrates that the release of the</u> <del>it is</del> information <del>that, if released,</del> would <u>give harm its interests by providing an</u> advantage to competitors or bidders <u>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.</u> <del>The requirement of Government Code 552.022 that a category of information listed under 552.022(a) is public information and not excepted from required disclosure unless expressly confidential under law does not apply to information that is excepted from required disclosure under this paragraph. Gov't Code 552.104</del></p>

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 ~~this subsection~~ Government Code 552.104(c) is void.

Gov't Code 552.104(a), (c)

MT 7/7/19: HB 81, effective 5/17/19, is an exception to the exception for information that if released would give advantage to a competitor or bidder. See Information That Advantages Competitors or Bidders below.

MT 7/8/19: SB 943, section 3, amends 552.104(a) to narrow exception for withholding info based on giving a competitive advantage to competitors or bidders.

MT 7/25/19: Moved Parades provision to Margin 3 under Information Related to Competition or Bidding and changed margin note to match statute's heading. Change in heading could affect xref in CH.

Deleted confusing provision from .104(b) referencing 552.022.

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 pertaining 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*

Attorney–Client  
Information

Information is excepted from public disclosure if it is information a district's attorney is prohibited from disclosing because of a duty to the district under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct or information that a court order has prohibited from disclosure. *Gov't Code 552.107*

Certain Information  
from Law  
Enforcement

Under certain circumstances, information (except basic information about an arrested person, an arrest, or a crime) held by a law enforcement agency or prosecutor is excepted from public disclosure if it is:



1. Information that deals with detection, investigation, or prosecution of crime; and
2. An internal record or notation that is maintained for internal use in matters relating to law enforcement or prosecution.

*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*

Trade Secrets

Except as provided by Government Code 552.0222 (disclosure of ~~C~~contracting ~~I~~information), information ~~A trade secret obtained from a person and privileged or confidential by statute or judicial decision~~ is excepted from public disclosure if it is demonstrated based on specific factual evidence that the information is a "trade secret," as that term is defined by Government Code 552.110(a). *Gov't Code 552.110(ab)*

Certain Commercial  
and Financial  
Information

Except as provided by Government Code 552.0222 (disclosure of ~~C~~contracting ~~I~~information), ~~Commercial~~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(bc)*

Proprietary  
Information

Except as provided by Government Code 552.0222 (disclosure of ~~C~~contracting ~~I~~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 the information is proprietary information under Government Code 552.1101. *Gov't Code 552.1101*

**MT 7/8/19: SB 943, section 4, defines trade secret and adds exception for contracting information under 552.0222. Section 5 adds exception for proprietary information.**

Certain Memoranda

An interagency or intra-agency memoranda or letters 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) (concluding that the deliberative process privilege, incorporated into the exception found at Government Code 552.111, exempts communications related to a governmental agency's policymaking)*



Audit Working  
Paper

An audit working paper of an audit performed by the district auditor, 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. *Gov't Code 552.116*

Certain Personal  
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 following persons, or that reveals whether the person has family members:

1. A current or former district employee or board member, except as provided by Government Code 552.024 [\[see Personal Information, above\]](#); or
2. A peace officer or [commissioned](#) a security officer. ~~commissioned by the Board of Private Investigators and Private Security Agencies, regardless of whether the officer complies with Government Code 552.1175.~~

[See Government Code 552.117\(a\) for the complete list of persons whose personal information is excepted from public disclosure.](#)

*Gov't Code 552.117*

**MT 7/11/19: We list 2 of 15+ types of persons listed in the statute. Should we expand this list or indicated that we are listing only those persons likely to be employed by the district?**

**MT 7/25/19: Editing here to acknowledge that policy does not list every person subject to this exception.**

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 a state-funded educational institution is excepted from public disclosure. <i>Gov't Code 552.122</i>
Certain Library Records	<p>A record of a library or library system 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:</p> <ol style="list-style-type: none"><li>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;</li><li>2. To a person with a special right of access under Government Code 552.023; or</li><li>3. To a law enforcement agency or prosecutor under a court order or subpoena.</li></ol>

*Gov't Code 552.124*

Superintendent Applicants	The name of an applicant for superintendent is excepted from public disclosure, except a 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. <i>Gov't Code 552.126</i>
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Certain Motor Vehicle and Personal Identification Information	<p>Information is excepted from public disclosure if the information relates to:</p> <ol style="list-style-type: none"><li>1. A motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;</li><li>2. A motor vehicle title or registration issued by an agency of this state or another state or country; or</li><li>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.</li></ol>
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The motor vehicle record information described above may be released only in accordance with 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 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 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)*

Individuals Who  
Inform of Violations  
of Law

An informer's name or information that would substantially reveal the identity of an informer is excepted from public disclosure, unless:

1. The informer consents. If the informer is a student or former student, consent may also be given by the informer's legal guardian or spouse; or
2. The informer planned, initiated, or participated in the possible violation.

"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.

The informer's name 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 considered to be confidential by law, including information excepted from disclosure under the PIA.

*Gov't Code 552.135*

Economic  
Development  
Negotiations

Information is excepted from public disclosure if it is information that 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, information about a financial or other incentive being offered is no longer exempted from public disclosure if the information is about a financial or other incentive being offered to the business prospect:

1. By a 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)*

Computer Network  
Security

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. [See Security Information, above] *Gov't Code 552.139(a)*

Social Security  
Numbers

The social security number of a living person is excepted from public disclosure. The social security number of a living person other than a district employee is not confidential, however. 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*

Crime Victim

Information that would identify or tend to identify a district employee who is also a crime victim under Code of Criminal Procedure, Chapter 56, Subchapter B, regardless of whether the employee chooses to restrict public access to the information, is excepted from public disclosure until the third anniversary of the date the crime was committed. *Gov't Code 552.132*

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**Officer for Public  
Information and  
Required Notices**

Officer for Public  
Information

*Duties*

A superintendent shall be a district's officer for public information. Each department head shall be an agent of the officer for purposes of complying with the public information laws.

The officer is responsible for the release of public information as required by the Public Information Act (PIA), Government Code Chapter 552. 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 PIA without obtaining the information from the temporary custodian; and
  - ~~3.~~d. The temporary custodian has not provided the information to the officer or the officer's agent.

**MT 7/7/19: SB 944 adding PIA duties related to temporary custodians.**

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*

*Public  
Information  
Coordinator Training*

For a board that has designated a public information coordinator to satisfy its required PIA training, the designated public information coordinator ~~Within 90 days after assuming office, a public information coordinator~~ shall complete the training ~~a course of training~~ regarding the responsibilities of a district and district officers and employees under the PIA not later than the 90th day after the date

[the coordinator assumes the person's duties as coordinator.](#) ~~Chapter 552 of the Texas Government Code (Public Information Act).~~ [\[See CPC\(LOCAL\)\]](#)

**MT 7/25/19: adding xref to CPC LOCAL as per CVC request.**

The training shall be not less than one nor more than two hours. The attorney general may provide the training and may also approve other acceptable sources of training.

A district shall maintain and make available for public inspection the record of a public information coordinator's completion of the training.

*Gov't Code 552.012(b), (c), (e)*

**MT 7/7/19: Edited for clarity and statutory tightening. Margin note changed to deemphasize "coordinator" and highlight training requirement that can be satisfied by coordinator if designated by the board.**

[PIA Sign](#)

The officer for public information shall prominently display a 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 PIA. 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*

## Access to Public Information

~~Access to Public Information~~  
~~Method of Requesting Public Information~~  
~~Procedural Rules~~  
[Requesting Public Information](#)

It shall be the 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 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:

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 that a request for public information may be made by that method on the PIA sign [see PIA Sign, above] or the district's website.

Designated  
Address

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

Public  
Information  
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 form and maintains a website shall post the form on its website.

Gov't Code 552.235

**MT 7/7/19: SB 944, section 6, adds methods for submitting written requests and AG request form.**

Procedural Rules

A district may promulgate reasonable rules of procedure by which public information may be inspected and copied efficiently, safely, and without delay. These rules may not be inconsistent with any provision of the PIA. *Gov't Code 552.230*



~~It shall be the 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~~

**MT 7/7/19: Moved policy statement to the top. Made Procedural Rules an M-2**

*Treatment of  
Requests*

The officer for public information and agent shall not make an inquiry of a requestor, except to establish proper identification or to ask the requestor to narrow or clarify the request. The officer for public information or 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. 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 PIA. *Gov't Code 552.222(a)–(b), .223–.224*

*Location of  
Access*

An officer for public information complies with a request for public information by:

1. Providing the information for inspection or duplication in a district's offices [see Time for Examination, below]. The PIA 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 mail, if the requestor requests that copies be provided and pays the postage and any other applicable charges that the requestor has accrued under Subchapter F of the PIA [see Costs and Charges, below];
3. By 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 by sending copies to the requestor, as described above.

If the officer for public information provides by e-mail an Internet location or URL address, the e-mail 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.

*Gov't Code 552.221(b)–(b-2), .226*

**Time for Response** An officer for public information shall promptly produce public information for inspection, duplication, or both, on application by any person. "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay. A district may not automatically withhold for ten business days public information not excepted from disclosure.

If an officer for public information cannot produce the public information for inspection or duplication within ten 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 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; Tex. Atty. Gen. ORD 664 (2000)*

**Requests to Narrow or Clarify** 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. If what information is requested is unclear to the district, the district may ask the requestor to clarify the request.

If the request included the requestor's physical or mailing address, the district must send the request for discussion or clarification to that address by certified mail. The written request for discussion or clarification must include a statement as to the consequences of failure by the requestor to timely respond.

If the requestor's request for public information was sent by electronic mail, the district may send 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.

If the district does not receive a written response or a response by electronic mail, as applicable, by the 61st day after the district sends the written request, the underlying request for public information is considered to have been withdrawn by the requestor.

*Gov't Code 552.222(b), (d)–(g)*

Time for  
Examination

A requestor shall complete the examination of the information not later than the tenth business day after the date the custodian of the information makes it available. If the requestor does not complete the examination within ten business days and does not file a request for additional time, the requestor is considered to have withdrawn the request.

The officer shall extend the initial examination period by an additional ten 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 ten 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.

A request is considered to have been withdrawn if the requestor fails to inspect or duplicate the public information in the offices of the governmental body 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.

*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:

1. If the district has the technological ability to produce the information in the requested medium;
2. If the district is not required to purchase any software or hardware to accommodate the request; and
3. Providing the copy will not violate 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*

Requests Requiring  
Programming or  
Manipulation

A district shall provide the 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 [see GBAA(EX-HIBIT)]; and
5. A statement of the anticipated time required to provide the information in the requested form.

*Response Time  
When  
Programming or  
Manipulation Is  
Required*

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 ten 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.

*Further Action*

After providing the written statement described above, the district has no 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 information in the requested form according to the time and cost 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, the requestor is considered to have withdrawn the request for information.

*Processing of Requests*

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 readily accessible file containing all written statements issued concerning requests for information that require programming or manipulation of data.

*Gov't Code 552.231*

Repetitious or Redundant Requests

If a district determines that a requestor has made a request for information for which the district has previously furnished or made copies available to the requestor, the district may:

1. Respond to the request for information as set forth below, at Procedures; or
2. Furnish the information or make the information available to the requestor again in accordance with the request. If the district selects this option, the district is not required to comply with the procedures described below.

*Gov't Code 552.232(a)*

These provisions do not apply to information not previously furnished to a requestor. A district shall treat a request for information for which copies have not been previously furnished or made available to the requestor, including information that was not furnished or made available because the information was redacted or because the information did not exist at the time of an earlier request, in the same manner as any other request for public information.

*Gov't Code 552.232(d)*

*Procedures*

A district shall, free of charge, 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.

*Gov't Code 552.232(b), (c)*

**MT 7/8/19: For SB 943 below, I broke up Section 9 of the bill into parts and inserted into different sections below. I am open to keeping these provisions together, rather than breaking them apart, but I'm at a loss as to where to put a new section on Contracting Information not Maintained by the District. Maybe a new Miscellaneous Provision?**

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(7)

~~This section~~ 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.

~~This section~~ 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)

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)

Request for  
Attorney General  
Opinion

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 PIA 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 below [see Statement 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 below [see Submission 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 [see Time for Request, below] 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 ~~this section~~ 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)

MT 7/8/19: SB 943, section 9, creates exceptions to timelines in .301 related to requests for contracting information not maintained by the district.

MT 7/8/19: SB 943, section 9, creates exceptions to timelines in .301 related to requests for contracting information not maintained by the district.

MT 7/8/19: SB 943, section 9, creates exceptions to timelines in .301 and presumption in .302 related to requests for contracting information not maintained by the district.

MT 7/8/19: SB 943, section 9, creates new requirements for contracting information not maintained by the district.

MT 7/25/19: Added definition of Contracting Information. Rather than dividing statute up, I put it all in one place and referenced the policies below. Added (f).

**Attorney General  
Decisions**Withholding  
g Excepted  
Information

Request for  
Attorney General  
Decisions

If a district receives a written request for information that the district considers to be within one of the exceptions to required disclosure and that the district wishes to withhold from public disclosure, the district shall request a decision from the attorney general about whether the information is within the exception [see Submission to Attorney General, below]. ~~For these purposes, the term "written request" includes a request sent by electronic mail or facsimile transmission to the officer or designee.~~

A district may only request an attorney general decision if the district reasonably believes that the requested information is excepted from required disclosure. Tex. Atty. Gen. ORD 665 (2000)

MT 7/7/19: SB 944, section 7 of the bill repeals .301(c). Changed margin notes to give better description of content. Moved AG opinion up from Time for Request.

*Time for Request*

A district must submit the request to the attorney general not later than the tenth business day after receiving the written request. If a district does not timely request a decision from the attorney general and comply with the requirements at Statement to Requestor, below, the information is presumed to be subject to public disclosure and must be released unless there is a compelling reason to withhold it.



*Gov't Code 552.301(a), ~~(b)-(e)~~, .302*

~~A district may only request an attorney general decision if the district reasonably believes that the requested information is exempted from required disclosure. *Tex. Atty. Gen. ORD 665 (2000)*~~

*Calculating  
Timelines*

For the purposes of Government Code sections 552.301–.308, 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 sections 552.301–.308 require a request, notice, or other document to be submitted or otherwise given to the attorney general within a specified period, the requirement 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 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. \[See GB Temporary Custodians\]](#)

*Gov't Code 552.233(d), .309*

**MT 7/10/19: SB 944, this is the third part of 552.233. The others in GB and DH.**

*Previous  
Determinations  
Same  
Information*

Except as set forth at Government Code section 552.301(g), a district may not request an attorney general decision 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 not within one of the exceptions. This exception applies to specific information that is again requested from a district after the attorney general has previously issued a decision regarding the precise information or records at issue. *Gov't Code 552.301(f); Tex. Atty. Gen. ORD 673 (2001)*

- Categories of 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 to which the decision applies may withhold the information without the necessity of seeking a decision from the attorney general.

*Tex. Atty. Gen. ORD 673 (2001)*

A district that relies on any previous determination to withhold information from disclosure should notify the requestor in writing of the decision or ruling upon which it is relying.

A district may withhold from public disclosure the categories of records listed at Texas Attorney General Open Records Decision 684 (2009).

*Tex. Atty. Gen. ORD 684 (2009)*

A district may withhold from public disclosure personally identifiable, non-directory information in "education records" as defined in the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. 1232g [see FL]. *Tex. Atty. Gen. ORD 634 (1995)*

*Statement to Requestor*

If a district requests an attorney general decision, it shall provide to the requestor within a reasonable time but not later than the tenth 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.

*Gov't Code 552.301(d)*

*Submission to  
Attorney General*

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.

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(e), (e-1)*

Unless the information is confidential by law, the district may disclose the requested information to the public or the requestor before a final determination that the information is public has been made by the attorney general or a court with jurisdiction. *Gov't Code 552.303(a)*

*Additional  
Information*

If the attorney general determines that additional information is necessary to render a decision, the attorney general shall give the district and the requestor written notice of that fact. The district shall submit the necessary additional information to the attorney general not later than the seventh calendar day after the date the notice is received. If the district does not comply with the attorney general's request, the information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. *Gov't Code 552.303(c)–(e)*

*Privacy or  
Property Interests*

If information is requested and a person's privacy or property interests may be involved, including a case under Government Code

552.101 (information confidential by law), ~~552.104 (information related to competitive bidding)~~, 552.110 (trade secrets), [552.1101 \(proprietary information\)](#), ~~and~~ 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. A person whose interests may be involved, 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. *Gov't Code 552.305(a)–(c)*

Notice to Owner  
of Proprietary  
Information

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), ~~or~~ 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 provide written notice to that person of its request. The notice must:

1. Be sent within a reasonable time not later than the tenth business day after the district receives the request for information; and
2. Include:
  - a. A copy of any written request a district received for the information; 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 tenth business day after the person receives the notice, a written statement of the reason(s) why the information should be withheld and a letter, memorandum, or brief supporting the reason(s).

*Gov't Code 552.305(d)*

**MT 7/8/19: SB 943, section 7, amends 552.305(a) and (d).**

**Charges Regarding  
Public Information  
Requests**

Costs and Charges

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. The charges shall not be excessive and shall not exceed the actual cost of producing the information or for making public information that exists in a paper record available.

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.

*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 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. The charge for providing a copy may not include costs of materials, labor, or overhead.

*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.

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, .262(a)*

*Attorney General's 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. [See GBAA(EXHIBIT)]

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)*

*Exemptions*

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)*

*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*

*Statement of  
Estimated  
Charges*

If a request for a copy of public information 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 ten 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.

Timing of  
Deadlines

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 U.S. 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 552, Subchapter G.

*Gov't Code 552.2615*

*Deposit or Bond*

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 [see Statement of Estimated Charges, above]; 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)*

For the purposes of charging for providing copies of public information or for requesting an attorney general's opinion, 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. *Gov't Code 552.263(e)*

A requestor who fails to make such a deposit or post such a bond before the tenth business day after the date the deposit or bond is required is considered to have withdrawn the request. *Gov't Code 552.263(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. *Gov't Code 552.263(c)*

A district that receives a request from 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) may require the requestor to pay the estimated charges for the request before the request is fulfilled. *Gov't Code 552.2661*

*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(d)*

*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 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*

*Government Publication* The cost provisions described above do 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, or the district may provide the publication free of charge, if state law does not require a certain charge. *Gov't Code 552.270*

**Inspection of Public Information** 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. *Gov't Code 552.271(a)*

Inspection of Public Information

*Confidential Information* If a page contains confidential information that must be edited from the record before the information can be made available for inspection, a 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.  
*Gov't Code 552.271(b)*

*Payment,  
Deposit, or Bond*

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(c)*

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)*

*Electronic  
Records*

If a district receives a request to inspect information that exists in an electronic medium and that is not available directly online to the requestor, the district may not impose a charge 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.

If public information exists in an electronic form on a computer owned or leased by a district, and 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's computer before the information is copied. If such information does require processing, programming, or manipulation before it can be copied, a district may impose charges.

If a district creates or keeps information in an electronic form, the 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 other means.

*Gov't Code 552.272*

Temporary  
Suspension of  
Requirements for  
Districts Impacted by  
Catastrophe

The requirements of the PIA do not apply if a district is currently impacted by a catastrophe and complies with requirements below to declare a suspension period.

"Catastrophe" means a condition or occurrence that 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.

"Suspension period" means the period of time during which a district may suspend the applicability of the requirements of the PIA.

Initial Suspension  
Period

A board may suspend the applicability of the PIA to the district for an initial suspension period, 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.

Notice to the  
Attorney General

A district that elects to suspend the PIA 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.

The notice must be on the form prescribed by the attorney general and 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 PIA 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 the ~~OMA~~ Open Meetings Act. The district must maintain the notice of the suspension during the suspension period.

Requests During Suspension Period

Notwithstanding another provision of the PIA, 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 Tolloed

A request for public information received by a district before the date an initial suspension period begins are tolloed until the first business day after the date the suspension period ends.

Gov't Code 552.233

**MT 7/7/19: SB 494**

**Miscellaneous Provisions**

Large or Frequent Requests

*Personnel Time*

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.

Request by  
Minor

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.

*Exception*

This section does not apply if the requestor is 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:

1. Dissemination by a news medium or communication service provider, including:
  - a. An individual who supervises or assists in gathering, preparing, and disseminating the news or information; or
  - b. 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
2. Creation or maintenance of an abstract plant as described by Insurance Code 2501.004.

"Communication service provider" has the meaning assigned by Civil Practice and Remedies Code 22.021.

"News medium" means a newspaper, magazine or periodical, a book publisher, a news agency, a wire service, an FCC-licensed radio or television station or a network of such stations, a cable, satellite, or other transmission system or carrier or channel, or a channel or programming service for a station, network, system, or carrier, or an audio or audiovisual production company or Internet company or provider, or the parent, subsidiary, division, or affiliate of that entity, that disseminates news or information to the public by any means, including:

1. Print;
2. Television;
3. Radio;
4. Photographic;
5. Mechanical;

6. Electronic; and
7. Other means, known or unknown, that are accessible to the public.

This section also does not apply if the requestor is an elected official of the United States, this state, or a political subdivision of this state or a representative of a publicly funded legal services organization that is a federal tax exempt entity under Section 501(c)(3), Internal Revenue Code of 1986.

*Written  
Statement of  
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 in the statement.

*Written Estimate  
of Charges*

If the cumulative amount of personnel time spent complying with requests for public information from the same requestor equals or exceeds the established time limit, a 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 district shall provide the written estimate on or before the tenth day after the date on which the request was made. 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.

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.

*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 tenth day after the date the district provided the notice that additional time was required.

<i>Acceptance of Charges</i>	<p>If a district provides a requestor with the estimate of charges and the time limits regarding the requestor have been exceeded, a 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 tenth day after the date the district provided the written estimate, the requestor submits payment of the amount stated in the written estimate.</p> <p>If the requestor fails or refuses to submit payment, the requestor is considered to have withdrawn the request.</p>
<i>Waived or Reduced Charges</i>	<p>This section does not prohibit a district from providing a copy of public information without charge or at a reduced rate, or from waiving a charge for providing a copy of public information, under Government Code 552.267 [see Waivers, above].</p> <p><i>Gov't Code 552.275</i></p>
Filing Suit to Withhold Information	<p>A district may file suit seeking to withhold information if the district receives a determination from the attorney general that information must be disclosed to a requestor. The suit must be filed in Travis County district court against the attorney general and must seek declaratory relief from compliance with the attorney general's decision.</p> <p>The district must bring the suit not later than the 30th calendar day after the district receives the attorney general's decision. 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 tenth calendar day after receipt of the attorney general's decision.</p> <p><i>Gov't Code 552.324, .353(b)(3)</i></p>
Parent's Request for Information	<p>A district that receives a request from a parent for public information relating to the parent's child shall comply with the PIA.</p> <p>A district that seeks to withhold information from a parent who has requested public information relating to the parent's child under the PIA, and that files suit 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 PIA.</p> <p>A court shall grant such a suit precedence over other pending matters to ensure prompt resolution. 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.</p>

*Education Code 26.0085*

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**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:
  - 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.

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 Texas Education Code 7.057.

*Education Code 37.105; 19 TAC 103.1207*

**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*

<b>Tobacco and E-Cigarettes</b>	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. <i>Education Code 38.006</i> [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. <i>20 U.S.C. 6083; 20 U.S.C. 7183</i>
<i>Criminal Penalty</i>	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.
<i>Defense</i>	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.
<i>Facilities for Extinguishment</i>	A district shall be equipped with facilities for extinguishment of smoking materials. <i>Penal Code 48.01(a)–(c)</i>
<b>Alcohol</b>	A board shall prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property. <i>Education Code 38.007(a)</i> [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: <ol style="list-style-type: none"><li>1. On the grounds or in a building of a public school; or</li><li>2. Entering or inside any enclosure, field, or stadium where any athletic event sponsored or participated in by a public school is being held.</li></ol> <i>Education Code 37.122</i> [See also FNCF]
<b>Fireworks</b>	A person may not explode or ignite fireworks within 600 feet of any school unless the person receives authorization in writing from the school. <i>Occupations Code 2154.251(a)(1)</i>
<b>Federal Gun-Free School Zones Act</b>	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**

A person commits a third degree felony if the person knowingly, intentionally, or recklessly possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon [see FNCG]:

1. Onto the physical premises (a building or portion of a building) of a school;
2. Onto any grounds or into a building in which an activity sponsored by a school is being conducted; or
3. On a passenger transportation vehicle of a school.

This offense does not apply if the person is acting pursuant to written regulations or written authorization of a district.

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), (f)*

A person commits a third degree felony if the person intentionally, knowingly, or recklessly possesses or goes with a location-restricted knife on the premises where a high school sporting event or interscholastic event is taking place, unless the person is a participant in the event and a location-restricted knife is used in the event. [See FNCG] *Penal Code 46.03(a-1)*

**“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 46.035(f)(3)*

**Excepted Persons**

Penal Code 46.03 does not apply to:

1. Peace officers or special investigators regardless of whether engaged in the actual discharge of the officer’s or investigator’s duties;
2. Parole officers while engaged in the actual discharge of the officer’s duties;
3. Community supervision and corrections department officers while engaged in the actual discharge of the officer’s duties;
4. An active judicial officer who is licensed to carry a handgun;
5. An honorably retired peace officer or other, qualified retired law enforcement officer, as defined by 18 U.S.C. Section 926C, federal criminal investigator, or former reserve law enforcement officer who holds a certificate of proficiency and is carrying a photo identification verifying that the officer ~~or investigator~~ qualifies for this exception;

6. The attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun;
7. An assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun;
8. A bailiff designated by an active judicial officer who is licensed to carry a handgun and engaged in escorting the judicial officer;
9. A juvenile probation officer who is authorized to carry a firearm; or
10. A person who is volunteer emergency services personnel if the person is carrying a handgun under the authority of Government Code, Chapter 411, Subchapter H; and engaged in providing emergency services.

*Penal Code 46.15(a)*

**MT 7/7/19: HB 1552, sec 6, clarifies who is a retired law enforcement officer by referring to definition in federal law.**

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 or Penal Code 46.03 or 46.035, or other law.

*Education Code 37.0815*

**MT 7/7/19: HB 1143 beginning w 1819-20 SY.**

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.

*Civil Practice & Remedies Code 112.001; Penal Code 46.01(18)*

~~MT 7/7/19: HB 1177, effective 9/1/19, permits carry during declared disaster.~~

~~MT 7/26/19: Removed HB1177 as per conversation with Joy. Provision is not necessary in PRM and not a great fit here. Consider moving Volunteer Emergency Services Personnel. above to new Emergency Response Policy in a future update.~~

### **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 or 46.035.

*Penal Code 30.06* [See also FNCG]

**Unauthorized  
Notice**

A district may not ~~provide~~ take any action, including an action consisting of the provision of notice, by a communication described by Penal Code 30.06 or 30.07 ~~or by any sign expressly referring to that law or to a concealed handgun license~~ 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 46.035 [or other law](#). *Gov't Code 411.209*

**MT 7/7/19: HB 1791 effective 9/1/19 broadens prohibition against district providing unauthorized notice that handguns are prohibited.**

**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 or 46.035.

*Penal Code 30.07*

**Interscholastic  
Events**

Unless authorized by law, a license holder commits a Class A misdemeanor if the license holder intentionally, knowingly, or recklessly carries a handgun, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place.

Penal Code 46.035(b)(2) does not apply if the license holder is a participant in the event and a handgun is used in the event.

*Penal Code 46.035(b)(2)*

**Board Meetings**

Unless authorized by law, a license holder commits a Class A misdemeanor if the license holder intentionally, knowingly, or recklessly carries a handgun, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a meeting of the board is held and if the meeting is an open meeting under the Open Meetings Act.

Penal Code 46.035(c) does not apply unless the license holder was given effective notice under Penal Code 30.06 or 30.07 [see Notice/Sign—Concealed Carry of Handgun and Notice/Sign—Open Carry of Handgun, above].

*Penal Code 46.035(c), (i)*

**Board Authorization**

A license holder does not commit a criminal offense under Penal Code 46.035 [see Interscholastic Events and Board Meetings, above] if the person is lawfully carrying a handgun pursuant to a board's written regulations and authorization. *Att'y Gen. Op. GA-1051 (2014)* [See Handgun Licensees at CKE(LEGAL)]

**Drones**

Federal Law

*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 Aircraft  
Systems*

"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.

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 14 C.F.R. Part 101; or

3. Any operation that a remote pilot in command elects to conduct pursuant to an exemption issued under Section 333 of Public Law 112–95, unless otherwise specified in the exemption.

*14 C.F.R. 107.1, .3*

*Model Aircraft*

A “model aircraft” is an unmanned aircraft that is capable of sustained flight in the atmosphere, flown within visual line of sight of the person operating the aircraft, and flown for hobby or recreational purposes.

Title 14 C.F.R. Part 101, Subpart E prescribes rules governing the operation of a model aircraft (or an aircraft being developed as a model aircraft) that meets all of the following conditions:

1. The aircraft is flown strictly for hobby or recreational use;
2. The aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
3. The aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
4. The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
5. When flown within five miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation.

No person may operate a model aircraft so as to endanger the safety of the national airspace system.

*14 C.F.R. 101.1(5), .41, .43*

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)*

**Commercial Signs**

A person commits an offense if the person erects or maintains a commercial sign or a sign in violation of Transportation Code Chapters 391 through 395 and the relevant provisions of the Administrative Code. *Transp. Code 391.003, .0031, .061, .067, 392.032, 393.005, 394.021; 43 TAC Chapter 21*

**MT 7/11/19: Correcting citation.**

General Definitions

“Commercial sign” means a sign that is:

1. Intended to be leased, or for which payment of any type is intended to be or is received, for the display of any good, service, brand, slogan, message, product, or company, except that the term does not include a sign that is leased to a business entity and located on the same property on which the business is located; or
2. Located on property owned or leased for the primary purpose of displaying a sign.

*Transp. Code 391.001(1-a); 43 TAC 21.142(1)*

“Sign” means any structure, display, light, device, figure, painting, drawing, message, plaque, placard, poster, billboard, logo, or symbol that is designed, intended, or used to advertise or inform.

*Transp. Code 391.001(11-a), 392.0301, 393.001, 394.001, 395.002; 43 TAC 21.142(28), .402(17)*

**MT 7/11/19: Citation correction**

“Electronic sign” means a sign, display, or device that changes its message or copy by programmable electronic or mechanical processes. *43 TAC 21.251, .142(5)*

“Directional sign” means a sign that contains only a message that identifies an attraction or activity and provides directional information, such as mileage, route number, or exit number, useful to the traveler in locating the attraction or activity. *43 TAC 21.941*

Interstate or  
Primary System

A district that wishes to erect or maintain outdoor advertising that is visible from the main-traveled way of the interstate or primary system shall comply with Transportation Code Chapter 391 and 43 Administrative Code Chapter 21, Subchapter I.

“Interstate system” means that portion of the national system of interstate and defense highways that is located in this state and is designated officially by the Texas Transportation Commission and approved under Title 23, United States Code.

“Primary system” means that portion of connected main highways located in this state that is designated officially by the Texas Transportation Commission and approved under Title 23, United States Code.

*Transp. Code 391.001; 43 TAC 21.142(11), (22)*

State Highway  
Right-of-Way

A district that wishes to place or maintain a sign on a state highway right-of-way shall comply with Transportation Code Chapter 392.

“State highway right-of-way” means the right-of-way of a highway designated as part of the state highway system. *Transp. Code 392.001*

Public Road

A district that wishes to place a sign on the right-of-way of a public road shall comply with Transportation Code Chapter 393.

Rural Road

A district that wishes to erect or maintain an outdoor sign that is visible from the main-traveled way of a rural road shall comply with Transportation Code Chapter 394 and 43 Administrative Code Chapter 21, Subchapter K.

“Rural road” means a road, street, way, or bridge:

1. That is located in an unincorporated area;
2. That is not privately owned or controlled;
3. Any part of which is open to the public for vehicular traffic;  
and
4. That is under the jurisdiction of the state or a political subdivision.

*Transp. Code 394.002; 43 TAC 21.402(16)*

Toll Road

A district that wishes to erect or maintain an outdoor sign that is visible from the main-traveled way of a toll road and erected for the purpose of having the message seen from the main-traveled way shall comply with any rules adopted by the governing body of the toll road authority under Transportation Code Chapter 395.

This provision applies only to a toll road located in a county with a population of 3.3 million or more; or that is adjacent to a county with a population of 3.3 million or more and in which a municipality with a population of more than 60,000 is located. *Transp. Code 395.001*

Electronic Sign

A district that wishes to erect an electronic sign shall comply with 43 Administrative Code, Chapter 21, Subchapter I.

Directional Sign

A district that wishes to erect a directional sign shall comply with 43 Administrative Code, Chapter 21, Subchapter Q.

**Charitable Raffles**

A raffle is the awarding of one or more prizes by chance at a single occasion among a pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize. *Occupations Code 2002.002(6)*

A “qualified nonprofit organization” for purposes of the Charitable Raffle Enabling Act may conduct raffles in accordance with the Act to benefit a district or school. A parent-teacher organization may be qualified to hold such raffles if it meets the requirements of the Act. *Occupations Code 2002.003, 2002.051; Atty. Gen. Op. JM-1176 (1990)* [See also CDC]

**District  
Communications**

When the government speaks, it is not barred by the Free Speech Clause from determining the content of what it says. Government statements and actions that take the form of speech do not create a forum for private speech. The government does not unconstitutionally discriminate on the basis of viewpoint when it chooses to advance permissible goals, even if advancing those goals necessarily discourages alternative goals. The government may exercise its freedom to express its views, even when it receives assistance from private sources for the purpose of delivering a government-controlled message. *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015)



**Identification**

A district may require a person who enters a district campus to display the person's driver's license or another form of identification containing the person's photograph issued by a governmental entity.

**Visitor Database**

A district may establish an electronic database for the purpose of storing information concerning visitors to district campuses. Information stored in the electronic database may be used only for the purpose of school district security and may not be sold or otherwise disseminated to a third party for any purpose.

**Sex Offenders**

A district may verify whether a visitor to a district campus is a sex offender registered with the computerized central database maintained by the Department of Public Safety as provided by Code of Criminal Procedure 62.005 or any other database accessible by the district.

A board shall adopt a policy regarding the action to be taken by the administration of a school campus when a visitor is identified as a sex offender.

*Education Code 38.022*

Notice of Entry onto  
School Premises

"Premises" means a building or portion of a building and the grounds on which the building is located, including any public or private driveway, street, sidewalk or walkway, parking lot, or parking garage on the grounds.

"School" means a private or public elementary or secondary school or a day-care center.

A registered sex offender who enters the premises of any school in Texas during the standard operating hours of the school shall immediately notify the administrative office of the school of the person's presence on the premises of the school and the person's registration status. The office may provide a chaperon to accompany the person while the person is on the premises of the school.

These requirements do not apply to:

1. A student enrolled at the school;
2. A student from another school participating at an event at the school; or
3. A person who has entered into a written agreement with the school that exempts the person from these requirements.

*Code of Crim. Proc. 62.064065; Health and Safety Code 481.134*

**MT 7/11/19: HB 4170 Redesignation to address two 62.064s added in 2017.**

Ordinances in  
General-Law  
Municipalities

"Child safety zone" means premises where children commonly gather. The term includes a school, day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children.

"Playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Health and Safety Code 481.134.

"Registered sex offender" means an individual who is required to register as a sex offender under Code of Criminal Procedure, Chapter 62.

To provide for the public safety, the governing body of a general-law municipality by ordinance may restrict a registered sex offender from going in, on, or within a specified distance of a child safety zone in the municipality.

It is an affirmative defense to prosecution of an offense under the ordinance that the registered sex offender was in, on, or within a specified distance of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

The ordinance may establish a distance requirement at any distance of not more than 1,000 feet.

The ordinance shall establish procedures for a registered sex offender to apply for an exemption from the ordinance.

The ordinance must exempt a registered sex offender who established residency in a residence located within the specified distance of a child safety zone before the date the ordinance is adopted. The exemption must apply only to areas necessary for the registered sex offender to have access to and to live in the residence, and the period the registered sex offender maintains residency in the residence.

*Local Gov't Code 341.906*

**Military Recruiters'  
Access to Students**

Each district receiving assistance under the ESEA shall provide military recruiters the same access to secondary school students as is provided generally to institutions of higher education or to prospective employers of those students. *20 U.S.C. 7908(a)(3)*

COMMUNITY RELATIONS  
VISITORS

GKC  
(LEGAL)

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. [See EK] *Education Code 29.9015*

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 39.054-023 (state assessments) and providing instruction in personal financial literacy as required under Education Code 28.0021.
2. Training and assistance in providing a gifted and talented program and each program that qualifies for a funding allotment under Education Codes 48.102 (special education), 48.104 (compensatory education), or 48.105 (bilingual education). ~~special education, compensatory education, bilingual education, and gifted and talented education.~~
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)*

**MT 7/11/19: HB3 amended this list; it also had some existing errors.**

### 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)*

ARD 8/19/19: Deleting this exhibit entirely at U114

~~Education Code 37.015 requires principals to make reports to local law enforcement authorities of certain classes of offenses, four two of which are referenced entirely only by citation. The offenses referenced only by citation are further defined below.~~

- ~~1. "Conduct that may constitute an offense listed under Section 508.149, Government Code":~~
  - ~~a. An offense for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.1242A.054 (c) or (d), Code of Criminal Procedure (use or exhibition of a prohibited deadly weapon during commission of or flight from a felony offense).~~
  - ~~b. A first or second degree felony under Penal Code 19.02 (murder).~~
  - ~~c. A capital felony under Penal Code 19.03 (capital murder).~~
  - ~~d. A first or second degree felony under Penal Code 20.04 (aggravated kidnapping).~~
  - ~~e. An offense under Penal Code 21.11 (indecenty with a child).~~
  - ~~f. A felony under Penal Code 22.011 (sexual assault).~~
  - ~~g. A first or second degree felony under Penal Code 22.02 (aggravated assault).~~
  - ~~h. A first degree felony under Penal Code 22.021 (aggravated sexual assault).~~
  - ~~i. A first degree felony under Penal Code 22.04 (injury to a child, elderly individual, or disabled individual).~~
  - ~~j. A first degree felony under Penal Code 28.02 (arson).~~
  - ~~k. A second degree felony under Penal Code 29.02 (robbery).~~
  - ~~l. A first degree felony under Penal Code 29.03 (aggravated robbery).~~
  - ~~m. A first degree felony under Penal Code 30.02 (burglary).~~
  - ~~n. A felony for which punishment is increased under Health and Safety Code 481.134 (drug-free zones) or 481.140 (use of child in commission of offense).~~
  - ~~o. An offense under Penal Code 43.25 (sexual performance by a child).~~
    - ~~— An offense under Penal Code 21.02 (continuous sexual abuse of young child or children).~~
    - ~~— A first degree felony under Penal Code 15.03 (criminal solicitation).~~
    - ~~— An offense under Penal Code 43.05 (compelling prostitution).~~
    - ~~— An offense under Penal Code 20A.02 or 20A.03 (trafficking of persons).~~

STATE AND LOCAL GOVERNMENTAL AUTHORITIES  
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GRAA  
(EXHIBIT)

~~p. A first degree felony under Penal Code 71.02 or 71.023 (engaging in organized criminal activity, directing activities of criminal street gangs).~~

~~2. "Deadly conduct under Section 22.05, Penal Code":~~

~~a. A person commits an offense if he or she recklessly engages in conduct that places another in imminent danger of serious bodily injury.~~

~~b. A person commits an offense if he or she knowingly discharges a firearm at or in the direction of one or more individuals or a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied.~~

~~c. Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.~~

~~3. "Terroristic threat under Section 22.07, Penal Code":~~

~~A person commits an offense if he or she threatens to commit any offense involving violence to any person or property with intent to:~~

~~a. Cause a reaction of any type to the threat by an official or volunteer agency organized to deal with emergencies;~~

~~b. Place any person in fear of imminent serious bodily injury;~~

~~c. 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;~~

~~d. Cause impairment or interruption of public communications; public transportation; public water, gas, or power supply; or other public service;~~

~~e. Place the public or a substantial group of the public in fear of serious bodily injury; or~~

~~f. Influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.~~

~~4. "Conduct that may constitute a criminal offense under Section 71.02, Penal Code" (Engaging in Organized Criminal Activity):~~

~~A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he or she commits or conspires to commit one or more of the following:~~

~~a. Murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;~~

~~b. Any gambling offense punishable as a Class A misdemeanor;~~

STATE AND LOCAL GOVERNMENTAL AUTHORITIES  
LAW ENFORCEMENT AGENCIES

GRAA  
(EXHIBIT)

- ~~c. Promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;~~
- ~~d. Unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;~~
- ~~e. Unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;~~
- ~~f. Any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;~~
- ~~g. Any offense under Penal Code Chapter 43, Subchapter B depicting or involving conduct by or directed toward a child younger than 18 years of age (Chapter 43, Subchapter B prohibits obscenity including: sale, distribution, or display of material harmful to minor; sexual performance by a child; employment of a child in a sexually oriented activity or a place where the child works nude or topless; and possession or promotion of child pornography);~~
- ~~h. Any felony offense under Penal Code Chapter 32 (fraud);~~
- ~~i. Any offense under Penal Code Chapter 34 (money laundering); or Chapter 35 (insurance fraud); or Chapter 35A (healthcare fraud);~~
- ~~j. Any offense under Penal Code Chapter 36 (bribery and corrupt influence);~~
- ~~k. Any offense under Penal Code 37.11(a) (impersonating a public servant);~~
- ~~l. Any offense under Penal Code Chapter 20A (trafficking of persons);~~
- ~~m. Any offense under Penal Code 37.10 (tampering with government record);~~
- ~~— Any offense under Penal Code 38.06 (escape), 38.07 (permitting or facilitating escape), 38.09 (providing a person in custody or an inmate with an implement for escape), or 38.11 (providing prohibited or controlled substances or items to person in custody or an inmate);~~
- ~~— Any offense under Section 42.10 (dog fighting);~~
- ~~— Any offense under Section 46.06(a)(1) (unlawful transfer of weapons) or 46.14 (firearm smuggling);~~
- ~~— Any offense under Section 20.05 or 20.06 (smuggling of persons); or~~
- ~~— Any offense classified as a felony under the Tax Code.~~

**MT 8/16/19: Updating this exhibit with HB 869 and prior legislative changes.**



[Delete at U114](#)

STATE AND LOCAL GOVERNMENTAL AUTHORITIES  
LAW ENFORCEMENT AGENCIES

GRAA  
(EXHIBIT)

~~My understanding of this exhibit is to identify those criminal offenses that are referenced in the Education Code only by statute. Therefore, I deleted the references deadly conduct under 22.05 and terroristic threat under 22.07 because they contain a description of the offense.~~

**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. ~~{See GRAA(EXHIBIT)}~~
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) ~~-(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. ~~{See GRAA(EXHIBIT)}~~
6. Conduct that may constitute a criminal offense for which a student may be expelled under Education Code 37.007(a), (d), 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 investigation 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]

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)–(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)*

**MT 7/8/19: HB 446 repeals Penal Code 46.01(8) definition of “knuckles.” Not sure this is the best way to deal with repealer as I’m not sure whether they will renumber.**

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)

MT 7/8/19: SB 2135 adds information relevant to a threat assessment to 15.27 notice provide by law enforcement to the Superintendent.

MT 7/25/19: Added Family Code provision related to access to law enforcement records by Sup for purposes of threat assessment or safety plan.

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)*

**MT 7/8/19: SB 2135 adds that law enforcement must notify the Superintendent whether it is necessary to conduct a threat assessment or prepare a safety plan for a student subject to 15.27 notice.**

*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 con-

	victed 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.
<i>Notice to Employees</i>	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.
<i>Failure to Provide Notice to Employees</i>	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.  <i>Code of Criminal Procedure 15.27(b), (l)</i>
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:  <ol style="list-style-type: none"><li>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</li><li>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.</li></ol> Notice shall be provided to the district within two working days.
<i>Review of Placement</i>	On receipt of the notice, the superintendent or designee shall review the student's placement in the DAEP [see FOC].  <i>Code of Criminal Procedure 15.27(g); Education Code 37.006(h)</i>
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), .053(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)*



A district may contract with another local government or a federally recognized Indian tribe that is located in Texas. A party to an interlocal contract may contract with a state agency or similar agency of another state.

An interlocal contract may:

1. Study the feasibility of the performance of a governmental function or service by interlocal contract; or
2. Provide a governmental function or service that each party to the contract is authorized to perform individually.

An interlocal contract shall comply with the requirements at Government Code Chapter 791. [See CH for interlocal purchasing contracts]

*Gov't Code 791.011*

### **Health-Care and Hospital Services**

A district may contract with another local government authorized to provide health-care and hospital services to provide those services for the district's officers and employees and their dependents.

*Gov't Code 791.030*

A hospital district may contract with a school district included in the hospital district to provide nursing services and assistance to employees or students of the district. *Health and Safety Code 281.0465*

### **Transportation System**

A board may establish and operate an economical public school transportation system outside the district if the district enters into an interlocal contract as provided by Government Code Chapter 791. *Education Code 34.007(a)*

### **School Crossing Guards**

A municipality with a population greater than 850,000 may contract with one or more school districts to provide school crossing guards. Under such a contract, a district may provide school crossing guard services to areas of the municipality that are not part of the district. *Local Gov't Code 343.011, .012*

**MT 7/11/19: .011 states the 850,000 population requirement.**

### **State Hospital for Accountability Purposes**

[A memorandum of understanding between a district and a state hospital under which the district provides educational services to a student who resides in the state hospital must provide that the school-district include the performance of the student on an assessment instrument or other achievement indicator adopted under Education Code 39.053 or a reporting indicator adopted under Education Code Section 39.301 in determining the performance of the district. Education Code 39.052](#)

MT 7/8/19: HB 2210, effective 6/14/19, adds requirement for MOUs between ISDs and state hospitals.

**Emergency Assistance**

A district may provide emergency assistance to another local government, whether or not the district and the local government have previously agreed or contracted to provide that kind of assistance, if:

1. In the opinion of the presiding officer of the other local government, a state of civil emergency exists that requires assistance from the district and the presiding officer requests assistance; and
2. Before the emergency assistance is provided, the board authorizes the district to provide the assistance by resolution or other official action.

Similarly, if in the opinion of a board president a civil emergency exists in the district that requires assistance from another local government, the board president may request assistance.

*Gov't Code 791.027*

**Mutual Aid**

A district that maintains the capability to provide mutual aid may render mutual aid to other local government entities under mutual aid agreements or the Texas Statewide Mutual Aid System. *Gov't Code 418.107(c)*

A district may provide mutual aid assistance on request from another local government entity or organized volunteer group. A superintendent, with the approval and consent of the board president, may provide that assistance while acting in accordance with the policies, ordinances, and procedures established by the board. *Gov't Code 418.109(d)*

Definitions

*"Local Government Entity"*

"Local government entity" means a county, incorporated city, independent school district, public junior college district, emergency services district, other special district, joint board, or other entity defined as a political subdivision under Texas law that maintains the capability to provide mutual aid.

*"Mutual Aid"*

"Mutual aid" means a homeland security activity, as defined by Government Code 421.001, performed under the system or a written mutual aid agreement.

*Gov't Code 418.004*

Requests for Assistance

A request for mutual aid assistance may be submitted verbally or in writing. If a request is submitted verbally, it must be confirmed in writing. *Gov't Code 418.115*

Ability to Render Assistance

When contacted with a request for mutual aid assistance, a district shall assess local resources to determine availability of personnel, equipment, and other assistance to respond to the request.

A responding local government entity may provide assistance to the extent personnel, equipment, and resources are determined to be available. A local government entity is not required to provide mutual aid assistance unless the entity determines that the entity has sufficient resources to provide assistance, based on current or anticipated events in its jurisdiction.

*Gov't Code 418.1151*

Supervision and  
Control

When providing mutual aid assistance under the system:

1. The response effort must be organized and function in accordance with the National Incident Management System guidelines;
2. The personnel, equipment, and resources of a district being used in the response effort are under the operational control of the requesting local government entity unless otherwise agreed;
3. Direct supervision and control of personnel, equipment, and resources and personnel accountability remain the responsibility of the designated supervisory personnel of the district;
4. The designated supervisory personnel of the district shall:
  - a. Maintain daily personnel time records, material records, and a log of equipment hours;
  - b. Be responsible for the operation and maintenance of the equipment and other resources furnished by the district; and
  - c. Report work progress to the requesting local government entity.
5. The district's personnel and other resources are subject to recall at any time, subject to reasonable notice to the requesting local government entity.

*Gov't Code 418.1152*

Duration of Aid

The provision of mutual aid assistance under the system may continue until:

1. The services of a district are no longer required; or
2. The district determines that further assistance should not be provided.

*Gov't Code 418.1153*

Employee Rights  
and Privileges

A person assigned, designated, or ordered to perform duties by the district employing the person in response to a request under the Texas Statewide Mutual Aid System is entitled to receive the same wages, salary, pension, and other compensation and benefits, including injury or death benefits, disability payments, and workers' compensation benefits, for the performance of the duties under the system as though the services were rendered for the entity employing the person.

The district employing the person is responsible for the payment of wages, salary, pension, and other compensation and benefits associated with the performance of duties under the system.

*Gov't Code 418.116*

Reimbursement of  
Costs

If the division of emergency management in the office of the governor requests the provision of assistance and a district responds, the state shall reimburse the actual costs of providing assistance, including costs for personnel, operation and maintenance of equipment, damaged equipment, food, lodging, and transportation, incurred by the district. A request for reimbursement made to the division must be made in accordance with procedures developed by the division. *Gov't Code 418.118*

If a local government entity requests mutual aid assistance from a district under the system that requires a response that exceeds 12 consecutive hours, the local government entity shall reimburse the actual costs of providing mutual aid assistance to the district, including costs for personnel, operation and maintenance of equipment, damaged equipment, food, lodging, and transportation, incurred by the district in response to a request for reimbursement. Local government entities with a mutual aid agreement when the request for mutual aid assistance is made are subject to the agreement's terms of reimbursement, as provided by Government Code 418.111. *Gov't Code 418.1181*

**Emergency  
Management  
Training**

~~This section applies only to an appointed public officer:~~

- ~~1. Whose position description, job duties, or assignment includes emergency management responsibilities; or~~
- ~~2. Who plays a role in emergency preparedness, response, or recovery.~~

~~An appointed public officer shall complete a course of training provided or approved by the division of emergency management in the office of the governor of not less than three hours regarding the responsibilities of state and local governments under Government Code Chapter 418 not later than the 180th day after the date the person:~~

- ~~1. Takes the oath of office, if the person is required to take an oath of office to assume the person's duties as an appointed public officer; or~~
- ~~2. Otherwise assumes responsibilities as an appointed public officer, if the person is not required to take an oath of office to assume the person's duties.~~

~~The division or other entity providing the training shall provide a certificate of course completion to public officers who complete the training required by this section. A public officer who completes the training required by this section shall maintain and make available for public inspection the record of the public officer's completion of the training.~~

~~Gov't Code 418.005~~

~~[See CKC for emergency management within a district.] MT 7/8/19: HB 6 adds an emergency management coordinator designated by a county with a population of 500,000 or more to those who get emergency management training. I did not add this person as it is irrelevant to school districts, but I did make some other changes from the bill along with some statutory tightening.~~

~~SB 6 made some changes to the content of the training course, including that it must include training based on a new disaster response guide from TDEM. This policy does not go into that level of detail, so I did not make changes from SB 6.~~

~~MT 7/25/19: Training provisions in 418.005 apply to certain officers of political subdivisions. Under 418.004, "political subdivision" means a county or incorporated city, so this section does not apply to school districts.~~

### **Infection Control Officer**

A district that employs or uses the services of an emergency response employee or volunteer shall nominate a designated infection control officer and an alternate designated infection control officer to:

1. Receive notification of a potential exposure to a reportable disease from a health-care facility;
2. Notify the appropriate health-care providers of a potential exposure to a reportable disease;
3. Act as a liaison between the district's emergency response employees or volunteers who may have been exposed to a

reportable disease during the course and scope of employment or service as a volunteer and the destination hospital of the patient who was the source of the potential exposure;

4. Investigate and evaluate an exposure incident, using current evidence-based information on the possible risks of communicable disease presented by the exposure incident; and
5. Monitor all follow-up treatment provided to the affected emergency response employee or volunteer, in accordance with applicable federal, state, and local law.

*Health and Safety Code 81.012*

Definitions

"Emergency response employee or volunteer" means an individual acting in the course and scope of employment or service as a volunteer as emergency medical service personnel, a peace officer, or a fire fighter.

"Reportable disease" means a disease or condition included in the list of reportable diseases and includes a disease that is designated as reportable under Health and Safety Code 81.048.

*Health and Safety Code 81.003(1-a), (8)*

Notice to Local  
Health Authority

A district that employs or uses the services of an emergency response employee or volunteer is responsible for notifying the local health authorities or local health-care facilities, according to any local rules or procedures, that the district has a designated infection control officer or alternate designated infection control officer.

*Health and Safety Code 81.012(c)*